United States Court of Appeals

for the Second Circuit

APPENDIX

74-2542

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United States Court of Appeals

For the Second Circuit

Docket No. 72-1064

CHRIS-CRAFT INDUSTRIES, INC.,
Plaintiff-Appellant,

against

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE, THE FIRST BOSTON CORPORATION, PAUL L. MILLER and N. BAYARD,
Defendants-Appellees.

Docket No. 72-1120

BANGOR PUNTA CORPORATION,
Plaintiff-Appellant,

against

CHRIS-CRAFT INDUSTRIES, INC.,
Defendant-Appellee.

UNITED STATES COURT OF APPEALS
FILED
JAN 3 1975

Docket Nos. 72-1053 and 72-1140

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellant,

against

BANGOR PUNTA CORPORATION,
Defendant-Appellee (Cross-Appellant).

APPENDIX ON APPEAL FROM FINAL JUDGMENTS OF UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK

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Counsel of Record Are Listed on Inside of Front Cover

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Q Was there any discussion on January 6th about additional purchases of Piper stock?

A Yes. We agreed to keep buying and I was at work right away getting -- gathering information, talking to some people and getting more current data, reading the recent releases, going through the files, and so on.

Q Now what information did you gather together after January 6th?

A Well, the 1968 annual report had not as yet arrived, and I didn't want to take a chance that in the normal course of the mailing that I might get it too late.

So I don't recall now whether I finally got a copy through one of the brokerage houses or whether my own copy finally came in, but I got a copy somewhere around the 10th of the month or the 11th of the month, I believe.

I purchased an updated edition of the Standard & Poor Industry Survey and reread the new Moody's and the new Standard & Poor reviews of the company, plus all the current happenings since those reviews were published.

I checked the Value Line opinions and surveys, went through the normal indices that I check in things like this, which I wanted to pudate, including Barron's, which I checked to see if they had published anything recently. The Financial Analysis Journal that I get, and the

Stanford Research Institute information.

MR. PENNOYER: May I ask your Honor to ask the witness to keep his voice up. I can't hear him, your Honor.

THE WITNESS: Sorry.

A I got some data from brokers, from investment services that prepare data for institutional investors on the general aircraft industry that were reasonably current, and in about a period of ten days or 12 days we had a raft of fresh updated information on the entire industry, plus Piper, that we all had a chance to peruse, and it aided us in our deliberations as to how we were going.

THE COURT: At this time you had already invested six million dollars, hadn't you?

THE WITNESS: That's right.

THE COURT: And you got the information after you --

THE WITNESS: About five million dollars we had invested at that point, I believe.

THE COURT: You got the information after the fact?

THE WITNESS: We were getting it as we were acquiring it, really. When I got back in January --

excuse me.

THE COURT: You were away?

THE WITNESS: I say, when I got back on January 6th we had acquired three million dollars' worth of securities.

THE COURT: By January 8th you had six million dollars' worth?

THE WITNESS: Yes. Keep in mind --

THE COURT: What day of the week was January 6th?

THE WITNESS: Probably a Monday, if I'm not mistaken.

BY MR. ~~SEIDMAN~~ ACKERLY:

Q I show you Exhibit 87 for identification, Exhibit 88 for identification, Exhibit 89 for identification, Exhibit 90 for identification, Exhibit 91 for identification, Exhibit 92 for identification, Exhibit 93 for identification and Exhibit 94 for identification.

Will you tell me briefly what each of those exhibits is?

A Yes. Exhibit 87 is a copy of the 1968 annual report of Piper Aircraft Company from my file.

Exhibit 88 is a copy of the Standard & Poor

Industries Survey on the aero-space section, which includes a section on the general aircraft industry, including the small ones, Piper and Cessna and Beech.

THE COURT: Dated when?

THE WITNESS: Dated August 29, 1968.

THE COURT: It wasn't very current, was it?

THE WITNESS: Well, this is only done twice a year, your Honor.

THE COURT: I know, but I heard you say a few minutes ago that you got the latest current information.

THE WITNESS: Of this particular survey, this is the most current you can get, and the reason that is useful, even so, if I may point this out, they run a long [illegible] number of years of the ratios, the net sales, the earnings, the investment back of fixed assets, and it is very useful from that point of view, and it is one of the few services that do that.

That forms the backbone of your survey.

A (Continuing) There is a Standard & Poor Update here on -- this is their regular listed service on Piper Aircraft, dated November 20, 1968, which is probably the most current one available at that time.

This is an industry survey here from Equity

Research, which is an old one. It is dated 1965.

This was given to me merely by one of my associates, merely to give me some additional background on the industry. It didn't have a lot of value then to us.

And then there was the Standard Research Institute -- I am sorry -- Stanford Research Institute's general aviation survey, which was also quite old, but again it served to give some background.

THE COURT: How old?

THE WITNESS: This was quite old. This is a survey we didn't buy. We acquired it when we acquired Chris-Craft. It is dated 1963 and deals with the industry generally.

Then there is a current Value Line sheet. That's Exhibit 92. The dating on this one is January 17, 1969.

Then, as a --

THE COURT: Did it come on January 6th?

THE WITNESS: No. All these things came in in the period of the first ten days from January 6th through a ten-day period, roughly.

(Continuing) Then there is a January 10, 1969, update on the Standard & Poor survey, the basic

survey that I have just mentioned a little earlier. This is Exhibit 93.

The issue has a more frequent update and this is that update.

And then there is an article from American Aviation dated January 20th, which was available to us, really, early in the month, and it deals with a general breakdown of the statistics of the industry at that time.

That's Exhibit 94.

MR. PENNOYER: I can't hear him. I am sorry.

Q Would you try to speak up, please, Mr.Rochlis.

A I will do the best I can. I am sorry.

Q Are Exhibits 87 through 94 for identification from your files, Mr. Rochlis?

A They are.

Q Now when did you acquire these exhibits? During what period of time?

A During the ten-day period, approximately ten-day or 12-day period between January 6th and possibly January 18th, or thereabouts.

Q Are these all the materials you acquired in that period?

A I think there may have been some others. I remember having a good deal more clippings on Value Line and a few others, that probably got dispersed in all the number of people that were going to that file.

Q I show you Exhibit 87 for identification and I ask you when you, Mr. Rochlis, read that report.

A I read this as soon as we got it, naturally.

When I say "naturally," because we were waiting for it, and it would have been possibly -- I would have to hazard a guess here because I can't tell by looking at it that it was probably somewhere around January 15th or January 12th -- in that area there.

THE COURT: May I see that one?

THE WITNESS: Certainly, your Honor (handing to Court).

I can't put a specific date on that. I might -- excuse me.

Q Can you by looking at the Piper 1968 annual report, Exhibit 87 for identification, tell me what matters, if any, were significant to you at the time you read the report?

MR. PENNOYER: Objection.

THE COURT: How does that bear on any issue in this case?

MR. ACKELL: Since this annual report contains descriptions of the products of the company, your Honor, and was read, as Mr. Rochlis has testified, prior to January 21, 1969, it bears on the issue of the knowledgeability of the Chris-Craft officers and the statements which they read prior to making the tender offer, your Honor.

THE COURT: How is that material?

MR. ACKELL: It is material, your Honor, to the issue of reliance upon statements made by Piper in its annual report.

THE COURT: Well, that calls for a different set of information than the statistical data or the general information about the company.

Now I may know all about General Motors and do nothing about it when I go to buy something.

On the other hand, I may know nothing about it and rely on something.

It gets right down to the question of what you say they relied upon instead of what existed in those old files.

MR. ACKELL: At the time, your Honor, I am talking about when Mr. Rochlis read that annual report for the first time, which he has placed at a time when Chris-Craft

1932 A

had already invested ---

THE COURT: Are you getting at the point as to what influenced himto continue with the purchase? Is that what your point is?

MR. ACKELL: Yes, your Honor.

THE COURT: Why don't you ask him? GGet right to it.

BY MR. ACKELL:

Q Can you tell from reading that report what influenced you to continue Chris-Craft's purchases of Piper Stock?

MR. PENNOYER: Objection.

THE COURT: Overruled.

I am not unaware that this is subjective, by the way.

Q (Continuing) And I will ask you how you can make that determination as you sit there today, sir.

A All right. I have underlined a number of things here that I wanted to bring to the attention of Mr. Siegel and others, that I thought were significant and that gave us courage to keep going, that basically said to me that we were on the right track here.

There were a number of negative things here but the positive things were very positive so far as I was

concerned, and it had to do with the fact that the company was developing the Pocono, with the commuter market specifically in mind.

Now this was very important so far as I was concerned.

THE COURT: What do you mean by the phrase "gave you courage to keep going"? Were you disheartened at about this time?

THE WITNESS: No, not at all, but we were always re-examining our position, and where we were going, what we were doing, and was it right, and always re-evaluating new information as it became available, and that's what I was trying to do here.

In other words, if I saw something here very negative, we might say: Well, here's something we didn't know what we should have known, perhaps, that gives us pause, and maybe we will change our minds about what we were doing.

But there was nothing in here that caused me to change my mind and I felt very good about what I read here. I thought that we had a good company and a good investment.

BY MR. ROCHLIS:

Q The underlines that you have referred to, did you make those at the time that you read that report, in January, 1961?

A Yes, I did. It is quite clear that the company was building this Beconc aircraft, and they were not only doing that but they were building a plant in which to house the airplane, to create it, rather, and that was a very bullish thing, the singlemost bullish thing in the report, so far as I was concerned, because I didn't want to see -- frankly, it was the thing that we talked about over the telephone a bit, too: the company's entrance into this piece of the market that Beech had always had unto itself, more or less.

We always thought that they could get a piece of it and we were really delighted to see that they were striking for it.

There's reference here to their international sales, which are usually good -- 25 to 30 per cent of their sales, and that was holding up pretty well.

Q Mr. Rochlis, I show you the page attached to Uncontested Finding 191, and I will ask you whether you have seen that photograph before.

A Yes. That's the tufted airplane. I have seen

1935A

that photograph.

Q Nowwhen for the first time did you see that photograph?

A It was in January.

Q January of what year?

A '69.

Q Now I refer you to the substance of Uncontested Finding 191, in particular the paragraph appearing at the bottom of that page.

Will you review that, please?

A Right.

Q Do you recall whether you had read that before today?

A Yes, I did.

Q Do youknow when?

A It was part of this cover story.

It wasn't really a story but it was really a reference to the cover, the same time.

Q Did you in the period after January 6th and before January 22nd obtain a copy of the Business & Commercial Aviation Magazine?

A What was that date?

Q January, 1969.

A What were the dates, now?

Q Between January 6th and January 22, 1969.

A Yes.

Q Mr. Rochlis, I show you Exhibit 88 for identification and I will ask you if you read that exhibit at the time you received it.

A Right. Yes, I most certainly did. And there's a section in here on general aviation, which is quite detailed.

Q I show you Exhibit 89 for identification and ask you whether you read that at the time that you had received it.

A Yes, I did.

Q And I ask you the same question with respect to Exhibit 90 for identification.

A Yes. I read that.

Q And I ask you whether the markings that appear on that document were made by you.

A They were not.

Q Do you know whom they were made by?

A I do not.

Q I show you Exhibit 91 for identification.

Did you read that document at or about the time you received it?

A I read this at about the time that I received it,

and also at an earlier date, as a matter of fact, for other reasons.

Q I show you Exhibit 92 for identification, which appears to be a Xeroxed copy of a Value Line survey.

A It's dated right up here, at the top, over here (indicating).

Q Dated January 17, 1969.

I ask you if you read that at or about the time you received it.

A Yes. I read that, and also of the other three aircraft companies at the same time. Those files aren't here, though, I see.

Q I show you Exhibit 93 for identification and ask you whether you read that at or about the time you received it.

A Right. I did.

Now this does not have a lot in it about what we are looking for, but I did read it.

Q I show you Exhibit 94 for identification and ask you whether youread that at or about the time you received it.

A I did.

Q Are the markings on that exhibit yours?

A Yes. They are mine.

MR. ACKELL: I offer Exhibits 87 through 94 for identification in evidence.

MR. PENNOYER: Your Honor, may we take a few minutes? I haven't seen these before.

THE COURT: All right.

(Pause)

MR. PENNOYER: Piper has no objection to Exhibits 87 through 94.

(Plaintiff's Exhibits 87 through 94 for identification received in evidence.)

BY MR. ACKELL:

Q Mr. Rochlis, after you read the documents marked Exhibits 87 through 94, did you discuss what you had read with any of your fellow officers at Chris-Craft?

A Yes.

Q With whom?

A With Mr. Siegel, Mr. Gordon, Mr. Barnett -- some of the directors.

Q Now between January 6th and January 22nd, could you tell me on how many occasions you had such discussions?

A I really don't recall.

Q Was it more than one?

A Oh, yes, quite a few.

Q The documents that have been marked Exhibits 87 through 94: did you make them available to Mr. Siegel, Mr. Gordon and Mr. Barnett?

MR. PENNOYER: Objection.

A Yes, I did.

THE COURT: Overruled.

Q Now if I can take you to January 21, 1969, can you tell me what conversations you were present at concerning Piper on that day?

A There was a good deal -- a good ' bit of discussion in theoffice amongst the officers of the company on that day.

I was not involved in a great deal of it. It was the beginning of the boat show activity in New York and I was involved with that.

Q Tell the Court about the conversations at which you were present.

A All right.

I had learned that there was a meeting being set up for the following day with a gentleman from the Technology Fund who had a block of Piper shares that he thought he might want to sell, and that a meeting had been set up with Mr. Siegel and Mr. Gordon and this gentleman from the Technology Fund for January 22nd

Q Is that the extent of the discussion on January 21st?

A Yes. As I say, I was in and out of these meetings, so I didn't get the whole -- the whole gist of the thing, but basically the purchase looked interesting. There was some concern about the fact that there was beginning to be some thinking about the possibility of: could we purchase control of the company and could it be done before having to wait a whole additional year, because the annual meeting of Piper was rather close by and the problems associated with acquiring shares with proxies to vote this coming meeting, and there was quite a lot of discussion along those lines.

Q Now on January 22, 1969, were you present at any discussions concerning Piper and Chris-Craft?

A Yes. Here again I was in and out of those discussions and --

Q If there was more than one, take them one by one through that day, please.

A Well, I think the first exposure I had was later in the afternoon, when the Technology Fund people had indicated that they would sell their shares and --

Q So we have it straight, there was no discussion in the morning at which you were present?

1941 A

A On the 22nd?

Oh, yes, there was. On the 22nd I had some discussions with Leonard Gordon, who had spoken to Mr. Siegel before I got to him, and they were talking about -- and then he explained to me what the conversation was about, and they were talking about the concept of making a tender, assuming that you could purchase the Technology shares, making a tender wherein you acquired the shares together with the proxies.

And then later on in the afternoon it was quite apparent that they were going to be able to make a deal with the Technology Fund, and when that became apparent then the idea of making a tender went forward that same evening.

Q Were you consulted on that matter?

A Yes. I was a part of the various officers of the company that were discussing all the complicated, many complicated aspects of putting this all together: the purchase of the shares and the proxy problems, the pricing, the dating, the timing.

Q Were there any discussions with officers or directors not physically present on that day?

A Yes. We were on the telephone frequently with those people who weren't present, particularly the

directors.

We had trouble chasing some of them down but we kept at it and we got to most of them that same evening. In fact, we reached them all, I think, by that evening.

Q Did you have conversations with any of those directors?

A Yes. I am not sure whom I specifically spoke to but my records indicate that all the calls were made from my office, as it happens.

I probably spoke to Mr. Goad and probably David Linowes.

Q Were you present at any conversations on January 22nd where the number of shares were discussed of the Piper tender?

A Yes, I was.

Q Would you relate to me the substance of those discussions, please?

A Of course. The intent would be to get something over 600,000 shares in order to be assured, you see, of control.

Q Well, first tell me who was present at the discussions.

A Well, Mr. Siegel, Mr. Gordon and myself. I believe Mr. Barnett. I am not sure whether Mr. Hollander

was or not.

And the amount of money that we had available, and the decision was to go, after much discussion, to go for 300,000 shares because we had the funds to definitely take that down with some reasonable overages, even if we wanted 600,000 shares.

We had indicated in our tender offer that we were interested in acquiring control, and if more shares came in that we could arrange the banking for it.

And even though there were discussions about whether we ought to go for 400,000 or 500,000 at times, and so on.

Q Was there any discussion of the price to be paid in the tender offer for the Piper stock?

A Yes, there was quite a bit of discussion. I was not in on all of it. And the $65 price was arrived at as a result of quite a bit of discussion and I was not a part of a good bit of it.

Q Did you vote in favor of the purchase of the Technology Fund block?

A Yes, I did.

Q Did you vote in favor of going forward with the tender offer?

A I did.

Q What were the factors that influenced you in favor of going forward with the tender offer?

A Well, fundamentally my position in the company as regards tenders is fairly well known. I personally, as an individual, do not like tenders as a way to acquire control of corporations.

However --

THE COURT: What are your objections?

THE WITNESS: I am sorry?

THE COURT: I say, what are your objections?

THE WITNESS: Well, it sort of begets a fight. That is my feeling. Or you run the risk of begetting a fight. There are other ways to do this, I feel.

THE COURT: You mean a fight that you could win or lose?

THE WITNESS: That's right.

THE COURT: And if you lose you have a minority position?

THE WITNESS: Well, that could be, but we've done this before and -- we've done this before and the situation seemed very, very favorable for a tender, in view of the fact that we could acquire that many shares that quickly, and the idea of being able to acquire them with the proxies made a lot of sense, and so I went along

which the rest of the group on the tender offer, and there was a unanimous decision when we finally came to make the tender.

THE COURT: What was the background of prior experience that you just referred to now in your last answer?

THE WITNESS: Well, when we were interested in Chris-Craft we considered making a tender at that time also, and in appraising the situation we finally agreed that the idea of not making a tender but of buying a substantial block of stock and talking to the management would make a lot of sense.

That was our appraisal of the kind of people we were going to be dealing with, and we went ahead on that basis where we did not make a tender.

Here was a case where we considered those two alternatives again, and it seemed in our judgment to be more propitious to make the tender.

THE COURT: Were there any other instances in the background of your experience where you did or did not make a tender?

THE WITNESS: I don't recall, unless -- I don't recall whether we made any tender or not in Baldwin at the time. I don't think we did then, but we may

have.

BY MR. ACKELL:

Q Did you make a tender in the Paramount situation?

A I don't think we did. I don't recall.

THE COURT: What was the Paramount situation?

THE WITNESS: The Paramount -- well, at one time we had a substantial investment in the Paramount Pictures, possibly around 9 per cent, 8 per cent or 9 per cent, I believe.

THE COURT: Who is "we"? Chris-Craft?

THE WITNESS: Chris-Craft.

Well, at that time it was Baldwin-Montrose. It wasn't Chris-Craft.

The tender, if I may expand once more -- the point you brought up, your Honor -- the thing that appeals to me about tenders, of course, is the fact that you don't get into minority positions, because either you get control or you don't get control. That's the beauty of a tender.

And in this case I think that would have prevailed had not the Bangor Punta-Piper arrangement occurred.

Q As of January 22, 1969, what funds were available for the tender by Chris-Craft?

A We had quite a bit of cash. We had, oh, possibly eight to ten million dollars of our own earned surplus cash that we were not using in the business, and we had the proceeds of approximately $26 million convertible debenture issue, of which the management itself bought about seven million of it.

Mr. Riegel, Mr. Gordon and myself put our own money into it to the extent of about seven million, on the same terms that the public put in the balance of the funds, so we had roughly about, say, between 33 million and 35 million of unoccupied cash.

Q Had you at that time spent some of that cash?

A Yes. We spent a little bit of it for Warner Bros., I believe. We had a position in Warner Bros. at the time.

Q Were some of those funds used for the Piper open-market purchases?

A Yes.

Q Did there come a time that you were elected a director of Piper, Mr. Rochlis?

A Yes. I was elected a director of Piper in March of 69.

Q After you became a Piper director did you make any requests for records or information from Piper?

A Yes, we made requests, both before and during and at the meetings to receive more information and more detailed information and more current information more promptly, and it was slow, it was very slow coming to us. Some things we never got and things like financial statements we eventually got. Certain minutes were made available to us in April.

THE COURT: You knew how to enforce your requests if you wanted to enforce them, didn't you?

THE WITNESS: We talked about that.

THE COURT: I say you as a director and an experienced man in the field knew that if you were entitled to information and weren't getting it, you knew how to get at it promptly, didn't you?

THE WITNESS: Yes, I did.

THE COURT: Did you take any steps to get information through any collateral assistance?

THE WITNESS: It didn't seem like it would be necessary, because they always promised they would prepare it for us and give it to us.

THE COURT: In other words, you were content to accept the explanations and understanding that you received, is that right?

THE WITNESS: Well, not really, your Honor.

THE COURT: But you took no action?

THE WITNESS: We took no action, correct.

Q I show you Exhibits 95 thorugh 107 for identification and I will ask you just very briefly to describe each one of those exhibits.

A These are the monthly annual statements of Piper Aircraft for the calendar year of 1970, plus the January 31, 1971 unaudited statement.

Q Did you receive those as a director of Piper?

A I did.

MR. ACHSEL: For the record, 95 is the January 31, 1970 unaudited Piper financial statements. 96 is the February 28, 1970, 97 is dated March 31, 1970,

98 is dated April 30, 1970, 99 is dated May 31, 1970, 100 is dated June 30, 1970, 101 is dated July 31, 1970, 102 is dated August 31, 1970, 103 is dated September 30, 1970, 104, October 31, 1970, 105, November 30, 1970, 106, December 31, 1970, 107, January 31, 1971.

I offer Exhibits 95 through 107 in evidence.

MR. PENNOYER: Objection. Relevance.

MR. RYAN: I join in that objection, your Honor.

THE COURT: I am going to sustain the objection to a mass offer of all of these documents, but I will have no hesitancy in receiving any material and relevant evidence that is particularly defined and pointed out.

MS. ACKELL: The purpose of this offer, your Honor, is to enable our expert to testify from the Piper financial data.

THE COURT: The authenticity of these documents, I take it, is conceded, and if any question is raised as to the foundation for a question that you ask your experts, why, that will be time enough to present these things in evidence. Otherwise they are just mass offers of proof, totally immaterial to the case. At all events, you may reoffer them if it becomes necessary.

At present them seem to have no materiality.

BY MR.ACKELL:

Q During May, 1969, Mr. Rochlis, do you recall making any requests for information from any officers of Piper Aircraft?

A May of 1969, yes. We had been asking at that time for more information about the Pocono aircraft, in particular.

Q To whom did you make that request?

A Primarily to Bill Piper.

Q Can you place it in time, in May?

A I think it was somewhere around the annual meeting -- I am sorry, the board meeting.

Q May 6, 1969?

A If that was around that meeting, that would be about the time. That was usually the only time I would see all.

Q Can you tell me what you asked of W. T. Piper, Jr.?

A We were concerned with what we had learned about the Pocono and the program, and we asked Bill to supply us with as much information as he could that would put us in a position to make some constructive decisions

and have an opinion rather than the posture we found ourselves in, that we were being told about what looked like acalamity, without being able to make any judgments about it.

Q Up to May 1969 what had you been told about the Pocono?

A Virtually nothing, except for the minutes that we received of a board meeting which defined the state of affairs of the Pocono program.

Q What board minutes are you referring to?

A August 6 of 1968. These preceded our coming on the board, and we had requested some of the minutes prior to our coming on the board andve finally got these in April of '69.

Q Can you tell me what it was about those minutes that caused you concern?

A It was a board meeting of the company in which the executive vice president of the company was asking the board to take action and move ahead on the Pocono program and a meeting in which other members of the board were violently opposed to the Pocono program. Mr. Poole was violently opposed and Mr. Green was opposed to the concept of going ahead with the program without having the

financing first clearly understood as to where the funds were going to come from to run the program. Mr. Poole's comments had to do with the fact that he thought the company was not prepared to go ahead with the program, that there was some significant undecided aspects about the airplane, that they had lost too much time in getting to the present point of development, that he felt they were in fact hurting their regular business by trying to get into the Pocono business, and this sort of thing was defined in these August 6 minutes.

The interesting thing about that is that there wasn't any rebuttal comment from either of the Piper family, only that after Mr. Poole finished his discourse they said, "Well, where shall we build the plant," as if they didn't hear any of his comments.

I noticed in the board meeting that followed that board meeting, the August 6 board meeting, the minutes were ratified, accepted without alteration whatsoever.

So that I took those minutes to be very meaningful and the fact that the Pocono program was in very serious trouble if not that it should be abandoned based on what was defined, and here we had no inkling of this and nobody wanted to give us information on it so

that he could become a part of the deliberations on whether the program should be ongoing or not.

Q What did W. T. Piper tell you after that May 6, 1969 board meeting on that subject?

A I don't recall.

Q Well, you testified that you made a request of Mr. Piper?

A Yes. Well, we never got anything beyond that. In other words, beyond the August 6 minutes we never received anything from Bill Piper or anyone else at Piper on the Pocono. We were always told this is what happened or that is what happened --

THE COURT: Did Mr. Piper tell you anything in May of 1969 to indicate to you that he had lost faith in blazing new trails by this Pocono?

THE WITNESS: THE COURT: In that particular time? ∧ I don't think so.

THE COURT: All scientific development is a matter of somebody stubbornly optimistic, isn't it? Sometimes it works and sometimes it doesn't? Isnt that the essence of development in science?

THE WITNESS: Except that this was not very scientific. What they were doing here was quite ordinary,

actually. I have been a part of programs of this type in other businesses and they were merely modifying the existing engine to fit a preconceived airplane. I don't want to speculate on what I think happened but I have a firm good feeling about what happened.

THE COURT: You don't think Mr. Piper was doing this for the purpose of plunging his company into disaster, do you?

THE WITNESS: No. I think probably he had blind faith that it might eventually work out. We know today that it has not.

THE COURT: He had also indicated in the past blind faith in other new ventures for the Piper Company, had he not?

THE WITNESS: I don't know that to be a fact.

THE COURT: Don't these reports refer to the background of the company?

THE WITNESS: Yes, but they refer to the efforts of another management, really: His father. I think this was really Bill's first go-round and I think, if I may say so, his judgment was not good.

THE COURT: Was there any indication that the father had just led a peaceful existence and had not

1956 A

tried to erect new signposts along the path of this light aircraft industry?

THE WITNESS: I think at this point, your Honor, that the senior was 87 years old and he was probably 20 years late in moving out of that spot and Bill was a little late moving in. That would be my judgment.

THE COURT: Did that influence you and Mr. Siegel in any way in going into the stock purchasing program in January of 1969?

THE WITNESS: No, it did not, because in the first instance we had no inkling that there were these types of troubles. They were not immediately apparent, they were not even apparent to some digging but you would have had to have some suspicions that something like that was afoot.

THE COURT: Didn't you have a feeling that Mr. Piper, senior, was a little superannuated and Mr. Piper, Jr., was a little premature?

THE WITNESS: NO, not at that time, I must say.

THE COURT: Allright.

BY MR.ACHILL:

Q Mr. Rochlis, as of early August 1969, what was your understanding of the status of the Pocono project?

A. I believe that was the point at which we learned through Dale Wallace that the company had two apparent serious problems --

Q. Before you explain what you learned, would you tell me what your understanding was of the project?

A. Of the Pocono?

Q. Yes.

A. In August of '69? I had no understanding. It was as if it were in limbo. In other words, we knew of all the hominoly indecisive posture the board assumed, one member of the board screaming "You can't go ahead, you don't have the financing," another member saying "You are ruining the rest of the company playing around with this idea," and still other members saying "Let's go ahead with this airplane," and this indecision prevailed during this period and we could not get information that would allow us to make judgments.

Q. Had the plant in Lakeland been built in that period?

A. Yes.

Q. You referred to a conversation with Mr. Wallace. Can you tell us when that was?

A. I don't remember the date. I believe it

was around the third quarter of '69. Is that about right?

Q If I suggested September 4, 1969, would that refresh your recollection?

A Yes, it could be.

Q Who else was present at the meeting?

A Larry Burnett and Leonard Gordon.

Q And Mr. Wallace?

A And myself.

Q What did Mr. Wallace say about the Pocoro?

A He said, "Would you believe" --

MR. PENNOYER: I would like to note an objection, your Honor --

THE COURT: Overruled.

MR. PENNOYER: -- to this line.

A He said "Would you believe these people have built a plant for an airplane they don't know if they are going to make or haven't figured out how to make?"

He was very upset and we were upset when we heard that, and that they were talking about abandoning the Pocoro project. We were not asked whether it should be abandoned or anything of that kind, we were being told what it was that they were going to do.

Q Is this the first time you were told those things?

A First time I was told. I don't know whether [illegible] ---

THE COURT: Did you record any objection in the directors' meetings about the abandonment?

THE WITNESS: I didn't think we were stupped --

THE COURT: Did you record any objection?

THE WITNESS: No.

Q Was the Pocono project ever formally abandoned by the Avco board of directors?

A The board, so far as I know, never took action. So it wasn't that we didn't take action; no one took any action.

Q Have you read the transcript of the deposition of John L. Shields taken in this action on February 25, 1971?

A Yes.

Q Did you know in January 1969 that AVCO-[illegible] agreed only to use its best efforts to [illegible] or the Pocono --

MR. PENNOYER: Objection.

MR. ICKRELL: I had not finished my question.

MR. PENNOYER: I'm sorry.

Q -- and that the engine was an experimental engine and would have to be certified by the FAA before the Piper aircraft could be produced, would have been in view of Gulf+Western's purchases of Piper stock?

MR. PENNOYER: Objection.

THE COURT: I think I will sustain the objection until you show that this witness made any cogent inquiry into the manufacturing process in January of 1969. As far as I got the testimony so far, they went into this whole affair on the basis of their estimate of the finances and chances of getting control, which is an entirely different field than evaluating the products and manufacturing and so on that you are raising now.

I don't think there is a sufficient foundation for that kind of an inquiry as yet.

Q In January 1969 did you take under consideration the Pocono project?

MR. PENNOYER: Objection.

THE COURT: Overruled.

A The Pocono project was very much a consideration

in our deliberations in January.

Q What did you learn about that project and from what sources?

A Everything that we learned about it was from published statements by Piper Aircraft, or others, commenting in print on Piper's comments. The investment services and Piper's own announcements, in the annual report, and so on indicated thatthis airplane existed and in fact it was a viable economic concept to the point where they had committed to build a plant.

When you stop to think that a listed company subject to the SEC as well as the New York Stock Exchange regulations as regards disclosures and in addition you have the Federal Aviation Administration, you have a super supervised entity, so far as I am concerned, and I would assume no one gets an airplane into production or off the ground without the FAA saying it is a good airplane and I would assume you have the certificates in hand or very nearly so.

MR. PENNOYER: I move to strike the answer.

THE COURT: No. That is descriptive of his state of mind and that may create some affirmaty[illegible] in the rest of his testimony, I don't know.

Q Did Chris-Craft invest in Piper in January 1969 as a financial speculation?

A No.

Q What influenced you in January 1969 to vote for the Piper purchase?

A We liked the general aircraft industry. We thought Piper was a good constituent of the industry and had more upside protection than, perhaps, say, Beech, because it had spent its time in the smaller, single engine area and it had the opportunity of getting into the area that Beech was in and in so doing brought in its scope and its earning capacity.

So that we saw that possibility and there were other things we liked. There were an enormously increased number of student registrations which always begot more aircraft sales in that area, and basically there were many good signs of a viable approach to general aviation through Piper Aircraft.

Q Prior to September 4, 1969 had you been told that Chris-Craft would miss a market?

MR. FENSTER: Objection.

Had I been told?

THE COURT: Overruled.

Q Yes.

A Had I been told?

Q Yes.

A I had not been told this, no.

Q What was your understanding of the power for the Pocono at that time?

A I am sorry, I didn't hear you.

Q What was your understanding with regard to the power for the Pocono prior to your meeting with Mr. Wallace?

A There was virtually no discussion about the Pocono between the time that we had asked for information, in May, and the time in September that we heard that the program might be abandoned.

Q Would you speak up, Mr. Rochlis, please?

Did you have an understanding about the engines to be used for the plane?

A No, not really.

THE COURT: Would you have understood them if you had heard anything about it? Did you have anything of an engineering background?

THE WITNESS: Yes, I do.

THE COURT: In what way?

A I have had two years of engineering in engineer schools, engineering drafting and engineering strength and materials, and also in my work in the boat division I deal quite a bit with engines.

THE COURT: Where did you take engine drafting?

THE WITNESS: Drexel Institute in Philadelphia.

THE COURT: When was that?

THE WITNESS: 1945, '46, something like that.

THE COURT: Did you ever apply that schooling in any business contacts?

THE WITNESS: I worked for a short while as a draftsman.

THE COURT: You had very little, if any, mechanical engineering experience?

THE WITNESS: Other than in the businesses that we were operating. We were operating ten differnet businesses and most of them had to do with mechanical things and I have aptitudes in these areas, I like to think.

Q Had you known of the facts set forth in the deposition of Mr. Farris in January 1969 would you have

voted in favor of the investment in Piper by Chris-Craft?

MR. PENNOYER: Objection.

THE COURT: Overruled.

A In January '69?

Q Yes, sir.

A In January '69 if I had known the very [illegible] state of affairs as regards the source of power for this aircraft I probably would have voted against the acquisition of the shares.

MR. ACKELL: No further questions.

CROSS-EXAMINATION

BY MR. PENNOYER:

Q When you got back to Barbados on January 2, Mr. Rochlis, you got a call from Siegel to you in Barbados and he told you he was buying ~~50,000~~ 5,000 shares of Piper. Do you recall that?

A I do.

Q You indicated in your direct testimony he said "Come on back and get me all this information about Piper"? Do you remember that testimony?

A Yes.

Q I will read to you from your deposition on June 20, 1969, which was approximately four months after

the event. You were asked on page 26:

"Q At the time of the January 2 phone conversation from Dearborn did Mr. Siegel or Mr. Gordon ask you to collect further information on Piper?

"A No."

Now, was that truthful, sir, when you told it on that deposition?

A I believe they did ask me. I didn't recall at that time.

Q In other words, you changed your position on that particular matter now today?

A Yes. I have had a chance to refresh my memory.

Q Is it your statement that your recollection now is better than it was four months after the event?

A Yes, because I have had a chance to go back over many of these things and I have refreshed my memory on that score.

Q All right.

And it goes on, page 26:

"Q Of any information on Piper?

"A No."

Q Are you also referring to the phone call?

Q Yes.

It goes on:

"Q Was it Mr. Gordon or Mr. Siegel at any time requested you to do that?

"A In what time sequence are you talking about?

"Q Let us take first between January 2 and January 23. To help you, that is the day of the cash tender offer.

"A I think just before or just after we made the cash tender offer I was asked to update my file."

Do you remember those questions and those answers?

A Yes, I do, and I wish to correct them in the sense that I have refreshed my memory since I have gotten back by looking at my file, which I did not do prior to this deposition.

Q Had you looked at your file before this deposition was taken?

A No. I had never been at a deposition before and didn't know how they worked --

Q You knew you were under oath?

A Yes, I did. I was answering to the best of my recollection at that time.

Q I show you the documents you produced today which you say are from your file and I will ask you to tell me what is in there that refreshes your recollection now that you were asked to update your file on January 2 --

A It wasn't only these things, but there are my diaries, my phone records of conversations with various people from whom I secured some of this information --

Q Let's take it one by one. What is it in those documents that refreshes your recollection now?

A This (indicating). I had to go out and buy this, because my surgine had expired (indicating).

Q Handing me Exhibit 88. Where is the date on that that indicates that you bought it at any particular time?

A That is my recollection, that I bought this when I got back.

THE COURT: Dated August 29, 1066?

THE WITNESS: Right.

Q Please continue. What else is it in these documents you produced from your file --

A From memory, now, this was given to me by Mr.

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Nelson of Equity Research at my request in the first week in January.

Q This is Exhibit 90?

A Yes. He said that was the only thing they had in the files and I said I would take it.

Q You said Mr. Nelson, the first week in January?

A Right.

Q Where do you have any notations that you called or spoke to Mr. Nelson or that he spoke to you the first week in January?

A I have no notation, but we discussed when I found it necessary to update my files -- I discussed where I got each of those pieces and worked it out that way. Mr. Nelson can testify, I am sure, if need be, that he provided me with that information at that time.

Q Do you have anything in your diary or your notes that shows that you spoke to Nelson the first week in January?

A No. I don't make a record of that. There may be a phone call in my phone diary, possibly.

Q There might be a phone call in your phone diary?

A Yes.

Q Have you looked at your phone diary?

A Yes. I don't recall whether that is in there or not, but Mr. Nelson would oftentimes stop into the office and

see what I was working on and provide me with information.

Q Did you bring your diary today?

A No.

Q Mr. Nelson was somebody you spoke to quite often?

A No. On occasions he would stop in and share his research with me.

Q Is there anything else in these documents that causes you to change your answer you gave in June of 1969?

A Yes. The Value Line surveys -- not all of them are here, but they are dated that way.

Q You were on the mailing list for Value Line?

A Yes.

Q And you collected a lot of companies from Value Line -- that is, information on a lot of companies from Value Line?

A Yes.

Q And there isn't anything on Exhibit 92 that says that you received that in early January?

A We don't date them when we receive them.

Q Will you answer the question, please? Is there anything on Exhibit 92 that shows you received this at any particular time?

A Yes.

Q What, sir?

A We received this on January 17, 1969.

Q What are you looking at?

A Right there (indicating).

Q The printed date on the Value Line service?

A Right.

Q And this is one of the things that you receive as a regular course?

A Correct.

Q And your secretary takes the Value Line, pulls the sheets out on the hundred or so companies on which you keep records and puts them in the files?

A No, we never do that. This is normally just filed as it comes in. I pulled this out because I was interested in the company at a given moment. At the time I was doing research on Piper, so I had the Xerox made. Otherwise we never Xerox them.

Q There isn't anything on there that shows you when you pulled it out?

A No. I am saying I had to pull it out around January 17.

Q Would you show me something else that indicates the basis for changing your answer?

A This had to be purchased on January 16 (indicating).

Q Because of the printed date, January 16?

A Yes. We don't subscribe and I had to go out and buy it.

Q It could not have been purchased before January 16?

A Right.

Q What else, sir?

A This piece here (indicating). I read that book.

Q What is that book? This is Exhibit 94.

A American Aviation, dated January 20. It actually becomes available about two or three weeks before the date of its printed publication date.

Q I note you have circled here in red the four airplanes of Grumman, Cessna, North American-Rockwell, and Piper Aircraft, and is it correct each of those airplanes that you have circled are agricultural airplanes?

A Yes.

Q Isn't it correct that at this time, some time shortly after January 29, there was an announcement that Chris-Craft brought suit against Piper in the Brooklyn Federal Court alleging antitrust violations based on any Piper-Grumman merger and you, sir, were asked to develop information on a possible competitive problem between Grumman and Piper based on the agricultural airplanes? Correct, sir?

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A No.

Q And why isn't that correct?

A I don't think I would be qualified to make that kind of judgment. That was an antitrust situation.

Q Weren't you asked to develop information on the nature of the aircraft, the agricultural aircraft built by Grumman and by Piper?

A We discussed it but I was not developing information on it.

Q In this case you were not asked to develop anything?

A No.

Q What was the basis of your information in agricultural aircraft only?

A Because Piper, unlike Beech and Cessna, is fairly heavily involved in agricultural aircraft and I was looking at that side of the coin at that time and if you will notice in the annual reports, I have done the same thing.

Q Before the cash tender offer did you discuss with Mr. Siegel this agricultural aircraft of Cessna and the one of Grumman Aircraft and the one of North American-Rockwell and the one of Piper?

A No. I don't think he would have been interested in that.

Q This was just your own curiosity?

A Right.

Q What else caused you to change your answer?

A This report here is not dated, of course, but we do have a strong recollection of getting that around January 10 or 12, thereabouts (handing).

Q This is Exhibit 87.

A The 1968 annual report.

Q Piper's 1968 annual report?

A Right.

Q And I believe you testified that the Pocono impressed you in reading this annual report?

A Yes. It is featured in that annual report.

Q You notice up here in the caption next to the picture of the Pocono it speaks of an 18-place experimental miniliner?

A Yes.

Q Did you read that?

A Yes, and a few other things.

Q No promises in there about a delivery date?

A No, but they don't say it isn't flying. They said they were building a plant for it, too.

Q Getting back to the date when you think you collected this, or received it, there is nothing on there to

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indicate the date of receipt by you? 1975 A

A No, other than my memory.

Q And your memory, you say, is now better than it was three months or four months after --

A I have taken a lot of effort to recollect a lot of things.

Q Was there any particular reason why you made this effort to recollect a lot of things?

A Yes, because I was told I would be a witness here and I wanted to know what the facts were and I got myself back into this thing to see what the facts really were.

Q When you were a witness before is it your testimony you were not interested in looking back --

A No. I had never been at a deposition before.

Q There were no surprises, were there, Mr. Rochlis?

A Well, I don't know.

Q What else was in these records that caused you to change your statement about being asked to collect information in the early part of January?

A In these particular records?

Q Yes, sir.

A Well, this thing was discussed at quite some length (handing).

Q That is Exhibit 83?

A Right.

Q The Forbes article?

A Yes.

Q Dated November 1, 1968?

A Yes. That was in my file.

Q And nothing on there shows on what date you received it?

A No, except I know I get it, as every subscriber does, as issued.

Q You are a subscriber to that magazine?

A Yes.

Q What else?

A And, of course, the annual reports --

Q Which you already had in your file?

A Yes. I went over them again to check them out. I spent two solid weeks updating myself during that period and doing it very rapidly and working quite late at night.

Q On your direct testimony you, I believe, testified that before the cash tender offer you discussed with Mr. Siegel and with Mr. Gordon the possibility of the goal or intent of getting 600,000 shares on a cash tender offer. Do you remember that testimony?

A Yes. We discussed a lot of numbers, 400, 500, 600,000.

Q Was the object of that discussion to decide whether

Q And were they truthful when you gave it?

A I thought they were.

Q And are they correct today?

A I think my recollection of it today is better, because I have refreshed my memory on it by discussing it with my associates.

Q And your associates are who?

A Mr. Gordon, Mr. Siegel, Mr. Bonanza.

Q Anybody else?

A I have always had an opportunity to refer to some notes that I have made.

Q You have some notes?

A I have since found some notes that I made, and they indicate to me that we discussed it at the time when it looks as if we mightbe able to buy the Hutchinson block of stock.

Q Did you bring them with you today?

A No; I did not. Hawkinson block of stock. Excuse me.

Q Incidentally, in connection with these studies of Piper that you made, did you write or generate any memoranda before February 3rd about Piper or its products?

A No. No; we don't usually work that way, because we are a very small group and working in a few offices, and we do almost everything by face-to-face discussion.

to get control on the cash tender offer?

A In part, yes.

Q I will read you from page 35 of your deposition of June 20, 1969:

"Q When did you first discuss the possibility of Chris-Craft claiming a control of Piper?

"A I don't recollect.

"Q In terms of events, was it before the cash tender offer?

"A No, I don't think so.

"Q Was it at the time of the cash tender offer?

"A I don't think so. Let me correct it: I think probably during the cash tender offer.

"Q Can you now fix a time? Was it in the beginning, in the middle, or towards the end?

"A Probably in the beginning."

Did you give those answers to those questions in June of 1969?

A If that is what the testimony says, I did.

THE COURT: Did you turn these notes over to your counsel?

THE WITNESS: I don't know whether I have given those to you or not. Have I, Joe?

MR. ACKELL: I am not sure, Mr. Rochlis.

THE WITNESS: All right. We'll have to see.

Q Mr. Rochlis, were you given to believe recently that it was important to be able to testify that 600,000 shares was discussed before the cash tender offer?

A No. I recall quite well that we did discuss that.

Q My question was, did you believe recently that it was important to so testify?

A No, only to tell the truth. We did discuss the 600,000 shares.

Q Is that what Mr. Gordon told you: just tell the truth?

A No; he didn't.

Q Now, when you got on the Piper board, I believe in March or April, you saw these, or you received these earlier minutes of Piper board meetings, specifically one of August, '68, in which the treasurer, Mr. Poole, on the record, voiced his difference of opinion about the Pocono program. Do you remember those minutes?

A Yes.

Q And he indicated, and you learned, when you read them, that he felt that the Pocono program might be too late; correct, sir?

A Yes.

Q And he indicated also other reasons for his belief that maybe the program wouldn't succeed. Do you recall those?

A Yes.

Q Now, when you learned this, in March or April of 1969 --

MR. PENNOYER: Withdrawn.

Q What did you understand the --

MR. PENNOYER: Strike that.

Q Did you understand that the Pocono was Piper's entry into the commuter market?

A Yes.

Q And you understood that it would be competing the Beech, didn't you? The Beech aricraft?

A Yes.

Q What model of Beech?

A I don't remember the name. It was probably one of the Bonanzas, I guess.

Q Probably what?

Q Probably what?

A Probably one of the Bonanzas. I don't recall the name of the Beech. But it was a question --

Q One of the Bonanzas?

A I recall it was going to be anywhere from $5000 to $15,000 cheaper than its competitor aircraft.

Q You know that the Bonanza is a single-engine aircraft, don't you?

A I'm not familiar with the Beech line.

Q And yet the Pocono was tremendously important in your thinking, was it not?

A Yes, because I do know that the market there is a piece of the market that Piper doesn't presently have, and it would be important if they could get it, whether you know the name of the airplane or not.

Q Were you asked this question and did you give this answer in June of 1969, page 107:

"Q If you don't know the identity of any particular Beech model which you say is the one the Pocono emulates, do you know any of the specifications of that Beech model?

"A No; I don't. I wasn't that much interested in it, frankly. It was a program that came to my attention only by virtue of the fact about the concept of doing some financing and the lack of decision that the board faced."

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Now, did you give that answer to that question in June of '69?

A Yes.

Q And was it correct?and truthful when you gave it?

A I think so.

Q And correct today?

A If I understand it, I think so.

Q And the program that you weren't that much interested in was the Pocono program, wasn't it?

A No. I wasn't interested in the Beech side of the story.

Q Well, was the program -- and I will read it again to you:

"It was a program that came to my attention only by virtue of the fact about the concept of doing some financing and the lack of decision that the board faced."

Now, the financing --

A Can I read what went before that, please?

Q No, sir. Please answer my question.

Now, the financing and the lack of decision of the board related to the Pocono, didn't it?

A Yes.

Q And is it still your testimony -- and I am showing it to you --

A I would like to see what went before.

Q -- that the program you referred to was not the Pocono program?

A When I say I wasn't much interested in it anyway, frankly, that was with reference to the Beech part of the thing inthe sentence that proceeds it.

Q And the program you say only came to your attention by virtue of the concept of doing financing and the lack of decision that the board --

A Yes. Theboard was indecisive on the thing, and you were asking me whether or not we could make a contribution there, and I said we didn't have the background at that time.

Q All right. Now, the board was indecisive about the Pocono program; is that correct?

A Yes, but you are asking the question with relation to Beech.

Q Just a minute, sir. And the program that came to your attention by virtue of that indecision was the Pocono program; right?

A The financing of the Pocono program, not the Pocono program. The financing of the Pocono program.

Q In other words, it was the financing that only came to your attention at that time?

A That's not what it says. It says there was

indecision as regards the financing, and we didn't feel qualified to make comment on it at the time.

Q Now, I believe you testified that you read the Forbes article of November 1, 1968, which is Exhibit 83, and I ask you, did you read that part of it, the caption above thepicture of the Pocono 1083, which says:

"Always late. Piper Navajo (top) a business plane, came out two years after Cessna's 411. Piper's Pocono, a commuter airliner, will be two years behind Beech's 99."

Did you read that, sir?

A Yes.

Q And you also read, did you not, that they hadn't decided whether to use turbo-props?

A No. I took that in a different light altogether.

Q You took that in a different context?

A Well, the turbo-props, because obviously you would follow the turbo-prop after you have a piston job.

Q You say obviously --

A I say obviously, because of the competitive aspects It would be $5000 to $15,000 cheaper, which meant it had to be a piston airplane. You could not do it and still have a turbo-prop.

Q So, as I gather it, you didn't believe that state-

ment?

A I did believe the statement. I believe the statement that the Pocono --

Q That is, the statement that they didn't decide to build -- just let me read it:

"We have not yet decided on a couple of points such as whether to use turbo-prop engines."

Now, as I understand your answer, you didn't believe that?

A No. I said I took that in a different light than you take it.

Q Now, sir, I believe you testified that you checked the '65 and '66 and '67 Piper annual reports more or less contemporaneously with their publication.

A Correct.

Q And you read the '67 report in '67. whenit came out or perhaps in '68?

A Yes.

Q And you read the '66 in early '67; is that right?

A Yes.

Q And at that time you were with Mr.Siegel in the Baldwin Monrose Chemical Company, weren't you?

A Yes.

Q So that you were in charge of this same acquisi-

tion program, informational program, at that time in Baldwin Monrose Chemical?

A Yes.

MR. PENNOYER: May I have one minute, your Honor? I think I can shorten this.

Q You didn't regard yourself as an expert in aircraft manufacturing, did you?

A No.

MR. PENNOYER: I have no further questions.

THE COURT: Any further cross-examination by anybody?

MR. ARNING: With your permission, your Honor, Mr. Waldman will examine.

BY MR. WALDMAN:

Q Mr. Rochlis, you testified that you had refreshed your recollection between the time your deposition was taken -- I believe it was June of 1969 -- and today; is that correct?

A Correct.

Q Didn't you discuss your preparation for your deposition with any of your colleagues before your deposition in June of 1969?

A I think very little. Practically none.

Q Did you make reference to any materials for your deposition in 1969?

A Unfortunately, I wasn't able to.

Q No materials at all?

A Virtually none. I was just too busy at the time.

Q Mr. Rochlis, I would like to read page 29 of your deposition of June 20, 1969, and ask you whether the following questions were put and whether you gave the following answers:

"Q But before you testified today, had you read any depositions given in this case?

"A I read some of them.

"Q Which ones?

"A I read Mr. Siegel's and Mr. Gordon's and Mr. Sherill's.

"Q When did you read these depositions?

"A Some time during the past 10 days or so.

"Q Was that at anybody's suggestion?

"A No."

Do you recall those questions and those answers?

A Yes.

Q Were they true?

A Yes.

Q And you did make reference to documents before your deposition?

A I thought you were referring to documents having

to do with my files and so on.

Q Mr. Rochlis, you testified on your direct examination today that it was the intent --

MR. WALDMAN: Strike that.

Q You testified on your direct examination that in your discussion with Mr. Siegel and Mr. Gordon on January 22nd, the intent was expressed to get 625,000 shares; is that correct?

A I don't know that I said 625,000 shares. I said something, to go for the control or 600,000 shares or 500 or 400. I mentioned a number of numbers, because we did discuss a number of numbers. We would have liked to have gotten in excess of 600,000 shares, if we could.

Q I would like to read from your deposition of June 20, 1969, page 44:

"Q Do you recall at this time any discussion about the minimum number of shares to be sought pursuant to the tender offer?

"A I remember there were discussions on the subject, but I don't remember the substance of the discussions.

"Q You know the basis upon which the $65 figure was arrived at?

"A Not really. I would say it was a matter of judgment on the part of the group. It was kind of a group decision,

as I recall."

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Do you recall those questions being put?

A Yes.

Q And those answers given?

A Yes.

Q Were they true then?

A I believe so.

Q Is your recollection better on that subject today than it was then?

A I think so.

Q You testified just a moment ago that you had read Mr. Gordon's deposition just within ten days and that that was true; correct?

A Yes.

THE COURT: How about the rest of those questions on that page?

MR. WALDMAN: The rest of those questions?

"Q As I understand it, you yourself do not recall expressing any view on the discussion?

"A On the price?

"Q Yes.

"A I expressed no views on the price that I now recall.

"Q How about the minimum number of shares to be

sought? Did you express any views at all? 1990 A

"A No, but I think I did express my views on the effect of the price on the amount of shares that we might attract.

"Q What did you say in that connection?

"A I don't recall. It was a part of, rather in my long-winded discussion."

THE COURT: And the next question?

MR. WALDMAN: "Q Were any writings prepared by anybody regarding that discussion, to your knowledge?

"A None to my knowledge."

Q Do you recall those questions being put?

A Yes; I do.

Q And those answers being given?

A Yes.

Q Were they true then?

A I believe I thought them to be true at the time I gave them.

Q Are they ~~true~~ now?

A I think so.

THE COURT: Does that mean that you don't recall discussing any minimum number of shares?

THE WITNESS: No. The question was whether I discussed the specifics.

THE COURT: I don't think that was the questinn at

all.

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THE WITNESS: No?

THE COURT: The question was whether you discussed the minimum number of shares and whether you expressed any views about it, and you said no.

THE WITNESS: The minimums. But we talked about the upsides: should we go for 600,000 or 625,000?

THE COURT: 600,000 was a very significant feature, and when you were examined before trial you made no mention of that significant feature?

THE WITNESS: Because the question was about minimums, not maximums.

THE COURT: You mean, the control was the maximum you were seeking?

THE WITNESS: That's right.

THE COURT: And you weren't seeking control?

THE WITNESS: We were seeking control. On the contrary.

THE COURT: If you were seekin control, wasn't that your minimum target?

THE WITNESS: Well, it need not be. The minimum could be affected by the availability to supply the cash required immediately. That would have more to say about what monimums you might go for.

THE COURT: The long and short of it is this, isn't it, Mr. Rochlis, that at no time when you were examined, a couple of months after all of these events took place, did you make any mention that the cash tender offer was designed to go for control?

THE WITNESS: I didn't mention it, no, but it was in the documents.

THE COURT: Anything else?

MR. WALDMAN: Just one or two matters.

THE COURT: All right.

MR. WALDMAN: No further questions, your honor.

MR. RYAN: I have no questions, your Honor.

REDIRECT EXAMINATION

BY MR. ACKELL:

Q Mr. Rochlis, in the period January 6th to January 22, 1969, did you make any requests of any lawyers for documentation concerning Piper?

A Yes. I requested some information from Cravath, Swaine & Moore.

Q Who at that firm?

A Mr.Gitlin.

Q Do you recall when you made that?

A I don't remember the specific dates, but it is in my phone diary. I called him twice.

Q Did you make that determination by checking the phone diary?

A I did.

Q Before testifying here?

A Yes; I did.

Q Mr. Pennoyer, on cross-examination, referred to the reference to agricultural aircraft in Exhibit 94. Did you have any reason to have any particular interest in agricultural aircraft at that time?

A Yes, because in addition to the fact that it was a significant -- some significant part, continuing part of Piper's business, we in another one of our businesses, as a manufacturer of insecticide, which are -- which are sprayed through aircraft usage -- I had some other interests in investigating the use of agricultural airplanes as regards our chemical business.

Q The name Sam Rotrosen is listed at the top of Exhibit 94. Who is he?

A He runs the chemical division where we make the insecticides.

Q You were also asked in your examination about what Mr. Gordon told you to say here in your testimony. Did he tell you not to tell the truth?

A No. He told me to tell the truth.

Q You wer also asked a question with respect to your deposition and whether in the course of that deposition you had said whether Chris-Craft intended to get control of Piper Aircraft as of January 22, 1969. Do you recall that question?

A Yes.

Q Do you know whether you were asked such a question in the course of your deposition?

A I was not asked that question.

MR. ACKELL: No further questions.

THE COURT: Does that complete the examination of this witness?

All right. You are excused.

(Witness excused.)

THE COURT: We will now recess until 10 o'clock tomorrow morning.

(Adjourned to March 17, 1971, at 10.00 a.m.)

***

HOWARD S. KLOTZ, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ACKELL:

Q Mr. Klotz, you are the general counsel of Arthur Lipper Corporation?

A I am.

Q How long have you been general counsel?

A Since April of 1968.

Q Are you a member of the Bar?

A Of New York and the District of Columbia.

Q Where did you practice before becoming general counsel of Arthur Lipper?

A I practiced for a year at Willkie Farr & Gallagher, and before that I was an attorney with the Securities and Exchange Commission in Washington, D.C.

Q What is the business of Arthur Lipper?

A Primarily a broker for institutions, securities broker for institutions, institutions being banks, insurance companies and mutual funds.

Q Is there a relationship between Arthur Lipper Corporation and the Fund of Funds?

A Yes; there is.

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Q Would you describe that, please?

A The Fund of Funds is one of our more substantial customers.

Q Now, do you have any knowledge concerning the Fund of Funds Proprietary Fund, Ltd.?

A Yes. Fund of Funds Proprietary Fund --

MR. RYAN: Objection, your Honor. The question is, does he have any information? Now he is starting to recite what the information is. I move to strike the question and the answer.

THE COURT: Strike it out as not responsive.

Q Would you tell me your knowledge with respect to the Fund of Funds Proprietary Fund, Ltd.?

A The Fund of Funds Proprietary Fund, Ltd. was created, I believe, in 1967, by Fund of Funds as a wholly-owned Canadian subsidiary, whose purpose it is to invest, reinvest and trade in securities, similar to the way mutual funds normally trade in securities, trade or invest in securities.

Q Is that your understanding of the business of Fund of Funds Proprietary Account, Ltd.?

A Yes.

Q Now, do you have any knowledge with respect to the amount of securities transactions that were handled through Arthur Lipper Corporation for the account of Fund

of Funds Priprietary Account, Ltd. in 1969? 1997A

A Yes; I do.

Q Will you tell me what that was?

A I reviewed our records last night, and I would say that we did at least $50,000,000 in transactions and maybe as much as $100,000,000 in transactions for Fund of Funds Proprietary Fund in 1969.

Q Do you know if other brokers acted on behalf of that fund in 1969?

A Yes.

Q And do you know if transactions in American securities were consummated through other brokers?

A Yes.

Q Did Arthur Lipper --

THE COURT: What was the last question and answer?

(Record read.)

THE COURT: I don't understand that, I don't understand the language of the question or the response. You have moved away from Fund of Funds International into American securities and I don't get what is happening.

MR. ACKELL: No, your Honor. By American securities I mean securities of American companies traded in the American market, not American Securities Corporation otherwise involved in the case.

Q Is your knowledge in response to the last question because of give-ups on those transactions?

MR. RYAN: I object to the form, your Honor.

THE COURT: He may answer.

A No.

Q What is the source of your knowledge?

A It's the knowledge of the workings of Fund of Funds, the way they do business through us.

MR. RYAN: Move to strike his answer, your Honor. It is completely hearsay.

THE COURT: He says that is what they do with them. How can it be hearsay?

MR. RYAN: No, he was testifying about what other brokers do.

THE COURT: He is talking about the transactions through Arthur Lipper & Company.

MR. RYAN: Excuse me, your Honor, I misunderstood his testimony.

Q In 1969 did Arthur Lipper for the account of Fund of Funds Proprietary Account, Ltd., purchase shares of he common stock of Piper?

A Yes, we did.

Q Do you know over what period of time those transactions took place?

A Beginning in February of 1969 and continuing in every month thereafter until May of 1969 we purchased securities in varying amounts, sometimes for a few hundred shares, sometimes for a few thousand shares.

Q Approximately how many shares were accumulated in that fashion?

A Approximately 40,000 shares.

Q During that period were there any sale transactions prior to May 16, 1969 of Piper stock?

A I believe there was at least one or two, and that occurred prior to the purchases I was describing.

Q When did those transactions take place?

A Sometime in early February of 1969.

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Q When Arthur Lipper made these purchases for the account of Fund of Funds Proprietary Account, Ltd., where did the stock certificates go?

A We delivered securities to the custodian, which is the bank of New York, against payment,and the Bank of New York held the securities.

THE COURT: As custodian for whom?

THE WITNESS: Fund of Funds Proprietary Fund.

Q Was this the regular practice of Arthur Lipper Corporation with respect to transactions on behalf of Fund of Funds Proprietary Account, Ltd.?

A Yes, it is the regular practice with respect to Fund of Funds Proprietary Account, Ltd. and practically all other institutions.

Q Were these securities purchased in the record name of Fund of Funds Proprietary Account, Ltd.?

A Well, technically our customer London & Dominion Trust Company. London & Dominion Trust Company, by the terms of a Securities & Exchange Commission order, was required to place orders in the United States for the account of Fund of Funds and although technically London & Dominion Trust Company was "our customer" the beneficial

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owner was Fund of Funds and Fund of Funds Proprietary Fund.

THE COURT: Is that recorded in any public place?

THE WITNESS: The Securities & Exchange Commission order?

THE COURT: No, that London Dominion Trust Company was acting as the agent for Fund of Funds Proprietary Fund.

THE WITNESS: Yes, sir. Our books are written with the name London Dominion Trust Company account, blank blank.

THE COURT: Does the name Fund of Funds Proprietary Fund appear on your ledgers?

THE WITNESS: No.

THE COURT: Did it appear in your purchase and sales records?

THE WITNESS: No.

THE COURT: Does it appear on your blotters?

THE WITNESS: It could have.

THE COURT: To your knowledge, did it appear on your blotters?

THE WITNESS: I just don't recall.

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THE COURT: In the confirmations that went out as broker for London & Dominion Trust Company, did you indicate in any way that the beneficial owner was other than London & Dominion Trust Company?

THE WITNESS: No. The record owner was London & Dominion Trust Company, as far as we were concerned.

THE COURT: When you delivered in the Bank of New York you delivered it for the account of London & Dominion Trust Company, didn't you?

THE WITNESS: Correct.

Q Did there come a time in May 1969 when you learned of the disposition of the Piper shares which had been accumulated by Arthur Lipper Corporation on behalf of the Fund of Funds?

A Not in May of 1969.

Q When did you become aware of it?

A Subsequently, when you law firm subpoenaed our records, searched our records and found a copy of a telex, which was furnished to you.

MR. RYAN: Your Honor, could you instruct the witness to keep his voice up, please. I lost his answer.

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THE COURT: Read the answer.

(Answer read.)

Q I show you a document which has been marked Plaintiff's Exhibit 108 for identification and ask you whether that is a copy of the telex that you are referring to.

A Yes, it is.

Q Is that a telex that was received by Arthur Lipper?

A Yes.

Q From whom was it received?

A I would think it was received from our London office, perhaps directly from London & Dominion Trust Company, "directly" meaning they may have passed the telex to Arthur Lipper's London office, which was transmitted to our New York office.

Q The telex is to Jerry O'Brien, Bank of New York?

A That's right.

Q Is that the person who handled the custody account of the Fund of Funds?

A Yes.

THE COURT: Wait a minute. Is there a

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custody account for Fund of Funds or is it a custody account for London & Dominion Trust Company?

THE WITNESS: It is London & Dominion, but I know the beneficial owner of it.

THE COURT: Does the Bank of New York know that?

THE WITNESS: Yes.

Q I show you Exhibit 109 for identification and I will ask you if you can identify that record.

A Apparently it is a confirmation or some slip of the Bank of New York -- I have not seen it before, other than today.

Q Do you know if that was a record that was furnished in response to the subpoena that was served on Arthur Lipper on behalf of Chris-Craft?

A It may have been. I just don't recall.

Q Do you know what it represents?

A It represents probably a Bank of New York --

THE COURT: Are you guessing, Mr. Klotz?

THE WITNESS: I am.

Q What is the name of the account referred to on that record?

MR. RYAN: Objection, your Honor.

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THE COURT: Sustained.

Q I show you Exhibit 110 for identification. Can you identify those documents?

A There are four pages of documents. The first three pages of confirmations of L. F. Rothschild & Company -- duplicate confirmations of L. F. Rothschild & Company, with a copy addressed to Arthur Lipper Corporation, attention Robert Holtz.

Q Are those records from the files of Arthur Lipper Corporation?

A Yes.

Q What account is referred to on those records?

MR. RYAN: Objection, your Honor.

THE COURT: You mean because the document should speak for itself and it is not in evidence yet?

MR. RYAN: Yes.

THE COURT: Can't we shorten the technical material? Are the documents admissible or not?

MR. RYAN: If he offers them, I have no objection.

MR. ACKELL: I offer Exhibit 110 into evidence, your Honor.

THE COURT: They are received without objection.

(Plaintiff's Exhibit 110 was received in evidence.)

THE COURT: For everybody's convenience, will you call attention to the answer to the last question from Exhibit 110.

(Answer read.)

THE COURT: What is the name ofthe account?

THE WITNESS: Bank of New York for account of Fund of Funds Proprietary Funds, Limited, special situations account, London & Dominion Trust Company, 27 Old Jewelry, London EC-2, England. Apparently all bases were covered.

Q Do you know if that was the practice for designating the name of the account in these Piper transactions?

THE COURT: This is an L. F. Rothschild record and how can he know about their practice?

MR. ACKELL: It is also an Arthur Lipper record, your Honor.

THE COURT: But you are asking him as to what Rothschild's practice was in designating their records. Did you do the same on your confirmations and statements?

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THE WITNESS: To the best of my recollection, we did not. We only showed London Dominion Trust Company.

Q Referring you to the telex marked Exhibit 108 for identification, do you know when Arthur Lipper Corporation received a copy of this telex?

A On May 16, 1969, but that appears from the notation from one of our people who received this. I can't testify independently as to when it was received just from the notation marked on it.

Q Was that the practice of your department, to make such notations on the record?

A Not in my department. Those people who received telexes for us marked the date nad time it was received.

Q That is the practice of the company?

A Yes.

MR. ACHELL: I offer Exhibit 108 into evidence.

MR. RYAN: I have no objection.

MR. PEINOYER: No objection.

(Plaintiff's Exhibit 108 was received in evidence.)

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Q Can you tell me what the meaning is of "FLWMG for NLS"?

A Clerk's shorthand reference for following for NLS, being Nancy L. Stewart, vice president of Arthur Lipper Corporation.

Q What in substance was to be done under the instructions of this telex?

A The first instruction, which doesn't appear on the face of this telex, but is implicit, is to pass the telex on to Jerry O'Brien of the Bank of New York.

Q Was it the formal practice of Arthur Lipper to pass on such communications to the Bank of New York?

A Yes. We had a communication system with London and Geneva, and if requested to pass on a communication, we would.

Q Now --

A Nowwith respect to the body of the Telex, it apparently instructs the Bank of New York to turn over 78,600 shares of Piper Aircraft.

MR. RYAN: Your Honor, the Telex is in evidence.

THE COURT: It is all right. I just read it. Let me hear what he says it says.

A (Continuing) To turn over 78,600 shares of Piper Aircraft to Charles Berger, who is an attorney with Willkie, Farr & Gallagher, and he in turn would deliver the certificates in Nassau to Swiss Bank Corporation, and it also alerts the Bank of New York that payment for the transaction would be forthcoming in the amount of six million and some-odd dollars and would be payable in London at the branch of the Bank of New York in London.

Q This refers to the sale of Piper stock to Bangor Punta?

A Apparently.

Q Does that include the . 40-some-odd thousand shares that you referred to here earlier in your testimony, purchased by Arthur Lipper Corporation?

A I can only guess. I can't say for sure. I mean, we just buy securities for our customers. I don't know whether the actual certificates that we delivered were the certificates that were used.

Q But do you know whether Arthur Lipper's position on behalf of its customer was sold to Bangor Punta in May,1969?

A I can only guess. I would assume so because we just buy securities, turn them over to the custodian bank, and what the custodian bank does after that --

MR. RYAN: I will object to the answer and move to strike it out.

THE COURT: Strike it out. The objection is sustained.

Q Do you know what the purpose was for the arrangements set forth in this Telex?

A To --

THE COURT: How would you know the purpose? Did anybody tell you?

THE WITNESS: The Telex would tell me.

THE COURT: Well, just reading the Telex -- I

think we can all read it. 2011A

If you have any additional information not contained in the Telex I would like to hear it.

THE WITNESS: I don't have any additional information.

THE COURT: Do you know anything about Mr. Berger, who he is?

THE WITNESS: Yes. I know he is an attorney, an associate with the law firm of Willkie, Farr & Gallagher.

THE COURT: Whom did they represent in this transaction?

THE WITNESS: Fund of Funds.

BY MR. ACKELL:

Q Did the records that I have shown you here, that we have marked as Exhibits 108, 109 and 110 for identification --

MR. RYAN: Your Honor, for identification -- 109 has not been introduced in evidence yet, I don't believe.

Q (Continuing) -- were they produced in response to a subpena to Arthur Lipper Corporation, which called for transactions in Piper Aircraft which were ultimately sold to Bangor Punta?

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MR. RYAN: Objection.

THE COURT: What does the subpena say? There is no dispute about that? Is that what the subpena says?

THE WITNESS: The subpena, I think, called for the production of all records.

Q With respect to what?

A The trades in Piper Aircraft.

Q In 1969?

A In 1969.

Q For the account of Fund of Funds?

A Right.

MR. ACKELL: I have no further questions, your Honor.

THE COURT: Did Mr. Berger of Willkie, Farr also represent the London and Dominion Trust Company?

THE WITNESS: To the best of my knowledge he only represented Fund of Funds.

THE COURT: Did you charge commissions or put any additional stamps on the transactions that were made for London and Dominion Trust Company when they were transferred over to the Fund of Funds proprietary fund?

THE WITNESS: Which transactions are you referring

to? 2013 A

THE COURT: Any transaction involved here.

You said that you made transactions for London and Dominion Trust Company.

THE WITNESS: Yes, we did charge commissions on those transactions which we executed for London and Dominion Trust Company.

THE COURT: Did you also charge commissions or arrange for any transfer stamps in connection with any transfer from London and Dominion Trust Company to Fund of Funds proprietary fund?

THE WITNESS: No.

CROSS EXAMINATION

BY MR. RYAN:

Q Mr. Klotz, you testified that you were familiar with the organization of Fund of Funds Proprietary Fund Limited, is that correct?

A Yes.

Q Have you ever seen the corporate documents or charter or bylaws of that organization?

A Never.

Q Have you ever seen any of the records of Fund of Funds' corporations, relating to its organization or purpose?

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A Yes.

Q What have you seen?

A I have seen copies of prospectuses of Fund of Funds. I have seen copies of account documents which we required to open an account.

Q Such as --

A Authorization to open the account, resolution of directors, et cetera.

Q But you never examined any of the corporate documents yourself?

A Correct.

Q Do you know whether Fund of Funds is registered with the Securities and Exchange Commission as a broker-dealer?

A Yes, I do have knowledge on that question.

Q What is your knowledge?

A That it is not registered.

Q Now you also testified, Mr. Klotz, that Fund of Funds was in the business of investing and ~~receiving~~ REINVESTING IN securities and trading as usual for mutual funds. Do you recall that testimony?

A Yes, I do.

Q What did you mean by that testimony?

A Well, a mutual fund buys and sells securities for

its own account, and Fund of Funds Proprietary Fund buys and sells securities for its own account, recognizing that a mutual fund is a vehicle for investment by large groups of individual investors who invest in the mutual fund, and the mutual fund in turn buys and sells securities.

Q So that the buying and selling of securities is just an incident to its business of investing, is that correct?

A Yes.

Q Now you also testified, Mr. Klotz, that to your knowledge your firm, Arthur Lipper & Company, purchased approximately 40,000 shares of Piper Aircraft securities -- I assume common stock.

A Yes.

Q Between February and May of 1969, is that correct?

A Yes.

Q You also testified that your firm performed quite a sizable amount of brokerage business for Fund of Funds, is that correct?

A Yes.

Q Do you know who was the main personality in Fund of Funds?

A The main personality being --

Q Bernard Cornfeld.

A Yes. He was the main personality.

Q He was part of the IOS organization, is that correct?

A Yes.

Q Mr. Lipper is the senior partner in your firm?

A He is the president.

Q And do you know whether Mr. Lipper is a personal friend or a friend of Mr. Cornfeld?

A I would say that he is -- at this time?

Q 1969.

A 1969, yes.

Q And did you ever discuss with Mr. Lipper or anyone else at your firm whether Mr. Cornfeld had any relationship with Chris-Craft Industries?

A No.

Q Do you know whether Mr. Cornfeld was a friend of Mr. Herbert Siegel, the chairman of Chris-Craft Industries?

A No.

Q Do you know whether Mr. Lipper is acquainted with Mr. Siegel?

A No.

Q Did your firm ever do any business, brokerage business, for Chris-Craft Industries?

A No. Not to the best of my knowledge, no. I am pretty certain.

Q Now you testified, Mr. Klotz, that in addition to these purchases on behalf of Fund of Funds or London & Dominion, you also sold some Piper shares for this account.

A Yes.

Q Do you recall approximately when those shares were sold?

A The early part of February, 1969.

Q Was this a sale in the ordinary course, across the New York Stock Exchange?

A Yes.

Q Are you sure it wasn't tendered to Chris-Craft Industries?

A If it were tendered, there wouldn't be a confirmation with commissions, the normal stock exchange commissions on it.

Q Well, is your answer that you are certain that these Piper securities were sold across the exchange?

A Reasonably certain.

Q Reasonably certain?

A Yes.

Q Did you examine your records concerning these transactions before you came here this morning?

A I did, but I don't recall specifically those two particular trades. Therewere two trades of two sale transactions.

THE COURT: Amounting to what number of shares?

THE WITNESS: I don't recall independently, your Honor. I can check my records.

THE COURT: Well, in composite, how much were they?

THE WITNESS: Oh, maybe a few thousand, I recall.

THE COURT: And what does that mean? Two or nine?

THE WITNESS: More than two and between five and ten, something like that. But I just can't recall independently of looking at the record.

THE COURT: What was the price that you got on the sales?

THE WITNESS: I can't -- I can't recall.

BY MR. RYAN:

Q Now when your firm was executing the orders for London & Dominion in February through May of 1969, were you familiar with the fact that your firm was transacting this

business for Fund of Funds?

A Yes.

Q Did you have any discussions with any of your associates concerning these purchases by Fund of Funds?

A These particular purchases?

Q Not specific purchases. The purchases, all of which occurred, as you testified, between February and May, 1969.

A You mean the purchases of Piper Aircraft?

Q That's correct.

A No. They were just ordinary, as far as we were concerned.

Q And did you ever have any discussions with any of your associates concerning any rumors on the Street as to the purpose of these purchases of Piper stock?

A No.

Q By Fund of Funds.

A No.

Q Are you, in your position as general counsel, in charge of enforcing the regulations of the SEC?

A I am vice president and general counsel and I am in charge of that and other things.

Q Do you keep your ears open for rumors going around the street as to the activities of your firm?

A I try to keep my ears open.

Q Do you recall hearing any rumors during the period between February and May, 1969, that Fund of Funds was warehousing Piper shares?

A No.

MR. RYAN: I have no further questions, your Honor.

THE COURT: Was your firm buying any Chris-Craft stock during this period?

THE WITNESS: I can't recall.

THE COURT: Were you buying any Chris-Craft stock for London & Dominion Trust?

THE WITNESS: I can't recall whether we were buying it for any account.

REDIRECT EXAMINATION

BY MR. ACKELL:

Q Under the Securities and Exchange regulations are you required to know your customer?

THE COURT: That is the New York Stock Exchange?

THE WITNESS: That is an eminent correction,

your Honor. 2021 A

A Yes, we are.

Q What steps did you take to know your customer in connection with these Piper purchases?

MR. KAAN: Is this proper redirect examination, your Honor?

THE COURT: No, but I will let him reopen his direct.

Q I am speaking now in connection with the London & Dominion purchases you previously testified to?

A I would say we probably took more steps to know our customer in this case than any other customer that we have.

THE COURT: Why, were you suspicious of the customer?

THE WITNESS: No. It is just that Fund of Funds and IOS have a special place in the heart of the SEC and we have to cross every T and dot every I in our relation with Fund of Funds, and because of that I relied not only on my own investigation in prospectuses and so forth, but I relied on the investigation of Willkie Farr & Gallagher, our outside counsel, and they are also counsel to IOS in various matters, as to their meeting Fund of Funds'

authority to do business, invest in securities under its corporate charter and compliance with various laws and regulations of the various countries involved and regulatory agencies involved.

THE COURT: Why didn't you show the number of Fund of Funds Proprietary Funds on your ledgers?

THE WITNESS: This was done at the SEC's insistence, or the Division of Trading & Market's insistence that all the trades be funneled through an "outside foreign broker dealer."

THE COURT: The SEC told you to do that?

THE WITNESS: Yes, sir.

THE COURT: Told you to mask the name of the true customers and put somebody else on your books?

THE WITNESS: Yes, sir. I might add, however, that we received these instructions directly from officers of Fund of Funds who told us that they had to transact business this way because the staff of the Securities & Exchange Commission insisted that it be done this way.

THE COURT: Do you have any written record in your files that Fund of Funds Proprietary Fund is the beneficial owner of this account?

THE WITNESS: I am sure we have.

THE COURT: Do you have any written record indicating that the SEC at any time told you to use a name other than the beneficial owner on your records?

THE WITNESS: I don't have a written record, but I can tell you at least one staff official who insisted upon it.

THE COURT: Who was that?

THE WITNESS: It was Harry Williams, who at one time was assistant director of the Division of Trading & Markets.

THE COURT: Did he give you an explanation of why you were to put an anonymous name or fictitious name on the account?

THE WITNESS: It wasn't a fictitious name, it was the name of a London broker-dealer or bank.

THE COURT: It wasn't the ordinary way you would keep your records, was it?

THE WITNESS: No, but, for example, if a bank, say the Chase Manhattan Bank, were to open an account and they would just give us an account number, we would ask the bank for whose account are we executing business, and they would say well, it is for the account

of an individual, and we might inquire further to determine whether the transactions executed for the individual don't violate any regulatory authority's regulation.

THE COURT: Did London & Dominion Trust Company have its own bank connections [illegible]ities and checks and deposit accounts, to your knowledge?

A In the United States?

THE COURT: Yes.

THE WITNESS: It had its own account at the bank of New York. They were the so-called owner of the account, but the bank knew London & Dominion was actually acting for Fund of Funds. It was apparently a three-tier arrangement, where London & Dominion would be the owner of the account and London & Dominion would be acting for Fund of Funds proprietary Fund, and the Bank of New York would be acting for London & Dominion knowing it would be acting for Fund of Funds Proprietary Account.

THE COURT: Was any of this ownership revealed to the New York Stock Exchange in any public record?

THE WITNESS: Very extensively.

THE COURT: All right, Mr. Ackoff.

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BY MR. ACKELL:

Q On cross-examination by Mr. Ryan you described the business of the Fund of Funds?

A Yes.

Q Was the Fund of Funds the parent of the Fund of Funds Proprietary Fund, Limited?

A Yes, I described that earlier.

Q Was the business of Fund of Funds the same as the business of Fund of Funds Proprietary Account, Limited?

A Yes.

Q Is the Fund of Funds Proprietary Account, Limited, a mutual fund?

A Well, it is not a mutual fund in the conventional sense; it is a wholly owned subsidiary of a mutual fund setup for specific purposes.

Q Does it sell any securities?

A Yes.

Q Under its own name, Fund of Funds Proprietary Account, Limited?

A Yes.

Q Does it sell its own stock?

A Yes -- when you say sell its own stock, do

you mean portfolio stock or Fund of Funds Proprietary Fund stock?

Q Proprietary Fund stock?

A No.

MR. ACKELL: No further questions.

MR. RYAN: I have no further questions, your Honor.

THE COURT: Let me ask you this: Is there any saving of transfer taxes by closing a deal in Nassau?

THE WITNESS: Yes. There are also federal tax considerations which would dictate a closing in Nassau.

THE COURT: What are those?

THE WITNESS: Well, a transaction outside the jurisdiction of the United States, the more contacts one has with the jurisdiction of the United States the more likely the transaction would be taxed or the entity transacting business would be taxed for federal tax purposes.

THE COURT: Are you referring to the FOF Proprietary Fund?

THE WITNESS: Yes, that's right.

THE COURT: All right.

(Witness excused.)

MR. LIMAN: We are waiting for somebody who

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A F T E R N O O N S E S S I O N

2.40 P.M.

MR. ACKELL: Your Honor, we are interrupting the testimony of Dr. Bellamore briefly for the testimony of George Lindberg.

G E O R G E L I N D B E R G, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ACKELL:

Q Mr. Lindberg, are you in the employ of the National Quotation Bureau, Inc.?

A Yes, sir.

Q What is your position there?

A I am assistant secretary of National Quotation Bureau.

Q How long have you been employed by the National Quotation Bureau?

A 46 years.

Q Would you briefly sketch for me what you have done in that period?

A Well, I have worked in every department, practically, from office boy up, but I have been thirty-five years in the library now, having charge of the library for the last

four years. Prior to that, I was assistant manager of the library, maintaining the records, our published records of the National Quotation Bureau, which is the National Daily Quotation Service, commonly called the pink sheets in the trade, and seeing that the files of our library are in order, with all the various prospectuses and so on that go into the pink sheets.

Q You refer to the "pink sheets." What do they include?

A The pink sheets are our publication, which is called the National Daily Quotation Service. In that we have approximately -- more than nine thousand daily over-the-counter securities, showing the name of the security, the name of the broker-dealer interested, the telephone number and the prices that he's interested in, such as the bid price or the asked price or both.

Q I would like to direct your attention to the time after January, 1969, and specifically July of 1969. In that period, what was the frequency of the issuance of the pink sheets?

A A daily publication.

Q When you say "a daily publication," today is March 17th. What is the date on the pink sheets that are issued today?

A March 17th.

Q When do they become available to the trade?

A Tomorrow morning.

Q Tomorrow morning?

A The 16th.

Q So this morning the sheets that became available to the trade were bearing the date March 16th?

A That is correct.

Q What do the pink sheets report?

A They report the bid and asked prices that the broker-dealers are prepared to buy or sell the stock for.

Q What is the procedure by which you receive the bid and asked prices?

A Well, our subscribers, which are broker-dealers, submit the quotations to us by messenger in the New York area here. They are picked up by messengers, or the Teletype, telephone and also by mail throughout the United States.

Q Are all of your subscribers broker-dealers?

A All of the subscribers that submit quotations to the pink sheets are broker -- registered broker-dealers, yes.

Q Those who receive the pink sheets are they also broker-dealers?

A Not all of them are broker-dealers, no.

Q Is any distribution made to the public of the pink

sheets?

A No, sir.

Q What category of persons other than broker-dealers receive these sheets?

A Banks.

Q You said you received the bid and asked prices of brokers by messenger during the day. Is there a particular time period during the day?

A Yes. There is, sir.

Q What is it?

A Between 9 o'clock in the morning and 2 o'clock. 2 is our closing.

Q Is there any indication given on the pink sheets of the time at which that bid was received?

A No, sir.

Q Is there any indication of the volume that the particular broker-dealer is willing to buy or sell?

A In the pink sheets?

Q Yes, sir.

A His price indicates a hundred shares at the time.

Q A hundred shares only?

A Trade a hundred shares. That's right.

Q Now, what is the effective time of the bid given by the brokers to the pink sheets?

A At the time that he prepared thatquotation, regardless of what time of the day it was. At that time he was prepared to pay such-and-such a price for a hundred shares.

Q That would be the day before the pink sheets are actually distributed; is that correct?

A That's correct.

Q Now, the prices that are contained in the pink sheets: those are prices to whom, sir?

A They are bid and asked quotations that the broker-dealers trade among themselves.

Q They are not prices at which the public could buy or sell?

A No, sir.

Q Do the figures appearing on the pink sheets --

THE COURT: Do you mean that those are the wholesale prices and not the retail prices?

THE WITNESS: That's correct.

THE COURT: Do you mean to say a bank can't call up and trade not on those pink sheets?

THE WITNESS: If the broker-dealer decides. Our sheets are only for the trade, only for the broker-dealers, has nothing to do with the public.

THE COURT: Doesn't the trust department of every bank call the person, the broker who is shown in the sheet?

THE WITNESS: Yes, but he would be charged commission and so on.

THE COURT: And that broker would sell to the bank at the price, wouldn't he, in the sheet?

THE WITNESS: He should, but I'm not sure of that. I wouldn't bet on that; no, sir.

THE COURT: Well, the question you were asked is whether these were inside prices or --

THE WITNESS: They are inside prices; yes, sir.

THE COURT: All right. I don't see how it could be inside prices if the bank across --

THE WITNESS: I'm not sure that the bank can.

THE COURT: Oh.

Q Now, do the bid and asked figures appearing in the pink sheets reflect actual transactions?

A No, sir.

Q Would you tell me briefly how the pink sheets are actually used, in practice?

A How they are used by our subscribers?

Q Yes.

A Well, the broker --

MR. ARNING: Your Honor, I'm not sure this gentleman is qualified to testify. What is his knowledge of what the broker-dealers do with the pink sheets?

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THE COURT: He would not seem to me so. Mr. Lindberg knows all about how they prepare their service, but I'm not at all sure about his knowledge, so far, as to what the pink sheets are used for and can be used for.

MR. ACKELL: I will withdraw the question.

Q I show you Exhibit 113 for identification. Can you tell me what that is, sir?

A Yes, sir. These are photocopies of our pink sheets that we published July 18, 1969, through August 7, 1969.

Q Now, do each one of those sheets include the bid and asked prices on those dates for Bangor Punta warrants?

THE COURT: You mean, to the extent that the warrants are advertised in the sheets?

MR. ACKELL: Yes, your Honor.

THE COURT: This is an advertisement. A broker who wants to be in the sheets calls them up and tells them, "I will buy" or "I will sell." That is all that appears in the pink sheets. If he doesn't call up, he doesn't get in the sheets.

Is that right, Mr. Lindberg?

THE WITNESS: Well, not quite, sir, your Honor.

THE COURT: Well, if he doesn't call up, does he get in the sheet?

THE WITNESS: No. He must submit a card. We have messengers throughout New York to pick up these cards, or he calls them in. But you must submit a quote in order to be in the sheets each day.

THE COURT: I think I know what a pink sheet is, and I don't think that this will impede your progress in any way. Why don't you just go ahead with the pink sheets? Does anybody object to them?

MR. RYAN: The introduction of the pink sheets? No.

MR. ARNING: Those are the pink sheets as they were published on that date?

THE COURT: They are photostats of the sheets published that day.

Q Do each of these sheets bear your signature that this is a copy as published in your office that day?

A Yes.

MR. ACKELL: I offer it in evidence.

(Plaintiff's Exhibit 113 for identification received in evidence.)

THE COURT: Go ahead, Mr. Ackell. Do you need these sheets?

MR. ACKELL: I will in a moment, sir.

THE COURT: All right.

MR. ACKELL: I would also like to offer Exhibit 114 for identification, which are the certified copies of the pink sheets for the Bangor 8-1/4 per cent debentures for the period July 23rd through August 7, 1969.

MR. ARNING: They are certified to be as published on those dates?

THE WITNESS: As published on those dates.

MR. ARNING: No objection.

MR. RYAN: No objection.

(Plaintiff's Exhibit 114 for identification received in evidence.)

Q Mr. Lindberg, on July 18th, on the pink sheets, there appears a bid and asked by First Prudential. The name White, Weld & Company also appears, with no bid and no asked. What is the meaning of that?

A That means that White, Weld & Company has an interest in the stock, but he didn't show any market.

Q He is not putting in either a bid or an asked at any time during the day?

A No, sir. That's right.

THE COURT: It means that they aren't publishing the bid. That means that the trader can call up the trader down at White, Weld and say, "How about it?"

THE WITNESS: That's correct.

Q Now, in the event that a broker's name appears twice in the same publication, what is the meaning of that, sir?

A In the same publication?

Q On the same day.

A On the same security?

Q Yes, sir.

Q It doesn't happen -- very rarely, but usually that would be two traders or something like that.

THE COURT: Probably a typewriter slip.

THE WITNESS: That happens, but sometimes two traders could be calling it. It doesn't happen often.

THE COURT: Here is one right here, Mr. Ackell.

In all probability, if you will ask Mr. Lindberg, you will find that the First Prudential was offering to buy at 6-1/2 and offering to sell at some other price, and the typist started writing "First Prudential 6-1/2" and realized it was a duplication and quit.

Q I refer you to the pink sheet for the warrants for July 26th, where the name First Prudential Corporation appears, and then a bid 6-1/2, asked 7-1/4. Beneath that there is a different telephone number beside the same broker-dealer.

A Yes.

Q There appears a bid of 6 and an asked of 7. Now, can you explain what that means, to me?

A Well, many, many traders naturally have their telephones right direct to their desk, and to me, two traders put in a market for the same security.

Q Now, is there any way of your showing which of those bid or asked came in first?

A No, sir.

Q In those instances where only a bid or an asked appears, what does that mean?

A Well, of course, that's just a bid or just an asked. That's an indication, or rather, that the broker-dealer is prepared to pay or offer that to buy or sell the security at that price at the time that we receive the quotation.

MR. ACKELL: I will note for the record that I also have available the pink sheets for the Crhis-Craft securities traded while its exchange offer was open, and that is available for cross-examination.

No further questions.

MR. ARNING: I think we would want to offer the Chris-Craft prices to complete the record.

MR. ACKELL: No objection. That is 115.

CROSS EXAMINATION

BY MR. ARNING:

Q Would you identify that as a similarly certified copy of the publication as it was published on the date indicated?

A Yes, sir.

MR. ARNING: We offer it in evidence.

MR. ACKELL: No objection.

(Plaintiff's Exhibit 115 for identification marked Defendant's Exhibit AB in evidence.)

Q Just one question, Mr. Lindberg.

You indicated in response to Mr. Ackell's question about volume that the quotations indicate 100 shares.

Isn't it true that that is simply a minimum?

A Not in our sheets, no, sir.

Q Isn't it true that the only requirement for a bidder putting in a bid is that he must be prepared to sell or buy a minimum of 100 shares?

A 100 shares, yes, sir.

Q You have no way of knowing whether he might also be prepared to take a thousand shares or 10,000 shares?

A That is correct.

MR. ARNING: No further questions, your Honor.

MR. PENNOYER: NO questions.

THE COURT: Thank you, Mr. Lindberg.

(Witness excused.)

MR. LIMAN: Bring back Mr. Bellamore, please.

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CURTIS-CRAFT INDUSTRIES, INC.

v.

PIPER AIRCRAFT CORPORATION, et al

(And two other cases)

March 18, 1971
10:00 a.m.

Trial resumed.

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MR. LIMAN: May I proceed, your Honor?

THE COURT: Yes, please.

MR. LIMAN: I would offer at this time Exhibit 113 for identification on the same basis as Exhibit 35, the Value Line survey, was offered. 113 contains the press reports of the May 8 press release.

MR. SHIMER: You have a 113 already.

(Pause)

MR. LIMAN: I am sorry, this is 116. 116 are the press clippings of the May 8, 1969 press

release.

THE COURT: You say you are offering it on the same basis as Exhibit 35. As I understood your ultimate remarks to me about Exhibit 35, you offered Value Line to show the currency of the phrase of $80 value at the time of the release of the Value Line statement.

MR. LIMAN: Right.

THE COURT: And not for the content or truth of the comment thereon.

MR. LIMAN: Not for the truth of the comments thereon, and I am not offering this for the truth of the comments thereon. They are clippings that run from May 3 through May 20, 1969.

THE COURT: All that you are offering this material for is to show the currency at the time of the clippings and not with respect to the truth of the comment thereon in any way?

MR. LIMAN: That's right, your Honor.

THE COURT: All right.

MR. LIMAN: So it is perfectly clear, I am offering it not for the truth but to show the $80 figure was contained.

MR. PENNOYER: No objection, for that pur-

pose.

(Plaintiff's Exhibits 35 and 116 were received in evidence.)

MR. LIMAN: I will offer 111 for identification, which are the tables and charts of Dr. Bellemore, and I have no objection to Mr. Ryan's offer of the combination that Mr. Bellemore made on control.

MR. RYAN: That is Defendant's Exhibit AD for identification, your Honor.

(Plaintiff's Exhibit 111 was received in evidence.)

(Defendant's Exhibit AD was received in evidence.)

MR. PENNOYER: Your Honor, we will have a motion at a later time with respect to Dr. Bellemore's testimony, but I am not objecting to its admissibility, subject to my making a motion later on with respect to the entire testimony.

THE COURT: All right.

MR. LIMAN: I would at this time proffer [illegible] deposition which I previously offered and which was subject to being qualified by the defendants and which have, in many cases, been amplified

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MR. SHIMER: With respect to the main part of the Chris-Craft claim, I move to dismiss the complaint on the ground that Chris-Craft's failure to acquire majority control does not give Chris-Craft standing to assert a complaint under Rule 10(b)(5); on the further ground that Chris-Craft has not established that Piper's resistance to Chris-Craft's attempts during the period of the cash tender offer prevented Chris-Craft from acquiring additional Piper shares; on the additional ground that nothing Piper did after the cash tender offer prevented Chris-Craft from acquiring Piper shares.

On the next ground, that there was nothing unlawful established by Chris-Craft inthe May 8th press release issued by Piper, nor did anything in the May 8th press release deter shareholders from tendering to Chris-Craft.

The next ground that Chris-Craft admits that until July it was in a position to liquidate its Piper holdings without loss, and therefore it has no basis for claiming damages with respect to any prior period of time.

The next ground is that nothing in the Bangor Punta prospectus of July 18, 1969, furnished by Piper or in the Piper letters of June 20th and July 25th deterred any Piper shareholder from tendering shares to Chris-Craft, nor has Chris-Craft established to the contrary.

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Finally, that Chris-Craft had an opportunity to purchase control of Piper at the conclusion of its exchange offer and elected not to do so, and to the extent it claims its inability to acquire control damaged it, the damage was brought by its own choice.

THE COURT: Will you explain that twelfth ground to me, that Chris-Craft had an opportunity to purchase control?

MR. SHIMER: Pardon me, your Honor?

(Record read.)

MR. SHIMER: Your Honor, the record is clear that at the close of the two competing exchange offers, Bangor Punta and Chris-Craft, neither party had control. Bangor Punta had approximately 45 per cent of the shares; Chris-Craft had approximately 41 per cent of the shares. There were still 15 per cent of the Piper shares in the hands of the public. These shares were available for sale and for purchase.

Chris-Craft did not make any attempt to purchase any of these shares, with the exception of 29,200 purchased between August 12th and 18th of 1969, and thereafter it refused to make purchases which, if it had done so, would have given it control.

THE COURT: Mr. Liman, what is the charge against

THE COURT: Is there any case that has so expanded the civil liability of the defendant?

MR. LIMAN: There are cases on what "scheme" means, your Honor, and they are in our brief.

THE COURT: Is there any case that says a defendant is liable before he begins to be a participant?

MR. LIMAN: I can't answer that, your Honor, for this reason, that here the damage that befelf us was damage that befell us as a result of what Bangor Punta did, not just what the others did. Sure, we could have control of the company had they not engaged in their acts before, but we were still in the ballgame up to May 8 and it was on May 8, when Bangor Punta came in, that the nail was driven in and they got control, and that is the point.

I am not saying if your Honor found --let me be crystal clear about it because I think I grasp the point: if your Honor found that all of the activities of Bangor Punta were non-actionable but that the activities of Piper preceding May 8 were actionable, so that there was no 10(b)(5) violation after Bangor Punta came in, I would be startled to find any case that said that Bangor Punta could be held liable in those circumstances. But, your Honor, if the activities that Bangor Punta engaged in from May 8 on are activities which themselves are actionable under the securities

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laws, and if this is all part and parcel of a course of conduct which was initiated earlier and which had its consequence when they gained control of Piper, then I think they are liable for the acts that were performed by the co-parties to the case and I think that is really the Ross v. Licht type of situation. Joint tort feasors is a doctrine I think is known to the securities laws, your Honor.

THE COURT: What about the bald question, dissociated from all other matters: has Chris-Craft any capacity to sue for a Section 5 liability in a 10(b)(5) or in a 14 of the Exchange Act case?

MR. LIMAN: I claim, your Honor, that the violation of 14 5 and Section 5 is a violation of 10(b)(5) itself.

THE COURT: On what ground do you claim the Fund of Funds transaction was not an exempt transaction?

MR. LIMAN: Let me start with the Fund of Funds transaction by saying it is not a Fund of Funds transaction but a Fund of Funds Proprietory Fund transaction and what is the difference, as the witnesses indicated? Fund of Funds is a mutual fund which sells its own shares to the public. Fund of FundsProprietory Fund does not sell its own shares to the public. Fund of Funds is a company which is engaged in the purchase and sale of securities as part

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MR. PENNOYER: They are not significant to the extent that we are interested, that we are specifically interested in Paragraph 4, which was referred to in the testimony of Mr. Gordon, and that paragraph was not changed.

We call Mr. Pool.

C H A R L E S W. P O O L, called as a witness on behalf of the defndants, being first duly sworn, testified as follows:

THE WITNESS: I reside at Maple Avenue Beech Creek, Pennsylvania.

MR. PENNOYER: The questions of this witness, your Honor, relate to proposed findings 148(a) and 180(a).

THE COURT: Did you just put them in evidence?

MR. PENNOYER: No; they are not, sir. They are contested findings.

DIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Pool, you are vice-president of finance of Piper Aircraft Corporation?

A Yes, sir.

Q And how long have you been employed by the company?

A Just short of twenty-five years.

Q And in January through September of 1969, what was your title with Piper?

A Treasurer, and I was a director.

Q You are not a director today?

A That's correct.

Q Briefly, what is your educational background?

A I am a graduate of Elmira Business Institute.

Q And briefly, that is your employment history before you came to Piper?

A I worked for a wholesale grocery concern.

MR. LIMAN: I can't hear.

A (Continuing) I worked for a wholesale grocery company in the capacity of office manager, part-time, and I was field representative. I then worked for the government as chief of property and supply. And then I came to Piper.

Q Are you related, by blood or marriage, in any way to any of the Piper family?

A No, sir; I am not.

Q When did you first learn that Chris-Craft was buying stock of Piper Aircraft Corporation?

A January 23, 1969.

Q And how did it come to your attention?

A I was so advised by W.T. Piper,Jr.

Q That is, he told you this -- or how were you advised by him?

A He had received a telephone call from Mr. Herbert Siegel which gave him this information, and he then told me.

Q And what if anything did you do with respect to Chris-Craft's cash tender offer thereafter?

A Well, upon hearing that they were -- that they had purchased shares already and intended purchasing more shares, we sought the advice of our outside counsel immediately -- and by counsel I am referring to not only legal counsel but investment banking counsel, our auditing counsel, Pittsburgh National Bank, for advice as to what such a thing involved for the future for Piper, what reactions normally could be made legally, et cetera, and so on.

Q And you say "we sought" or you sought this advice immediately. Can you fix a date on that or an approximate date?

A Insofar as contact with our auditing firm, it so happened that on that particular day, January 23, 1969, Mr. Donald Fennelly, a partner of Arthur Young & Company, our auditors, outside auditors independent auditors, was present at Piper Aircraft in Loch Haven and was consulted. I believe W.T. Piper, Jr. contacted First Boston Corporation, and I believe also Chadbourne Park, our outside legal counsel, and I believe that was all the same day.

I think possibly a contact with Pittsburgh National

Bank was made at a later time.

Q Did Piper have inside counsel for house counsel?

A No, sir.

Q Now, did you attend a meeting in New York with Mr. Siegel, I believe the following day?

A Yes, sir.

Q And will you describe the discussions that you heard in the course of that meeting? First, tell me who was there, if you remember.

A As I recall, present at the meeting on behalf of Chris-Craft was Mr. Leonard Gordon, Mr. Herbert Siegel, Mr. Armond Erpf of Loeb Rhoades, and on our behalf W.T. Piper, Jr., myself and Paul Miller from First Boston, and Paul Miller acted as spokesman for us and had asked the Chris-Craft people what their intentions were and what they proposed doing, et cetera. All we could elicit from them in the way of any information was a sort of a discussion or a monolog on the fact that they were a leisure-time group or that was their philosophical concept of their business organization, and that Piper would just fit into that like a glove, being a part of that leisure-time concept. And we really weren't too much in this concept, but we couldn't elicit any further information from them, so that the meeting came to an abrupt end.

Q Did you receive any written materials from any of your advisors -- and I exclude counsel from that -- with respect to Chris-Craft's finances?

A Yes, sir.

Q And did you receive those before January 25th?

A I believe so.

Q Did you, yourself, review those materials?

A Yes, sir.

Q And what did you conclude from that?

A I concluded that the Chris-Craft organization was not an organization which -- with which we wanted to become associated.

Q And on what basis did you make that conclusion?

A Well, I would say one factor was the manner of their approach, which we viewed as one being characterized by stealth and secrecy.

Another factor was, in our study or in my study of the materials and talking to various of our advisers, that their history or track record was not one to inspire our confidence in them, that they had seemingly gone from a company by the name of Seeberg and had taken over by some means or other Baldwin Montrose, and subsequent to that takeover, the growth of Baldwin Montrose seemed to have been stopped or stifled.

They had then moved on into Chris-Craft, and the same pattern seemed to have taken place there, that the growth seemed to have stopped.

In addition, their debt capacity seemed to have been fully used up, which was not the case with Piper. We had a considerable amount of unused debt capacity, and it was a normal fear, I think, on our part that quite possibly if we were to become affiliated with Chris-Craft that Chris-Craft might very well use Piper's debt capacity for their own purposes rather than for the growth of Piper Aircraft Corporation.

Q Now, there is a finding in the record, Finding 18, I believe, which referred to a meeting of the board of directors of Piper on January 25th. Did you attend that meeting?

A Yes, sir.

Q And reading the first sentence of the finding:

"Piper's board of directors enacted resolutions stating that in the judgment of the board of directors, the Chris-Craft tender offer was not in the best interests of the shareholders of the corporation."

Did you concur in that conclusion?

A Yes, sir.

Q On what basis?

A One factor was that it was felt that all that was being offered was to purchase 300,000 shares of Piper stock, which left the balance of the stockholders in effect hanging in limbo.

Another factor, I believe, was that if Chris-Craft were offering to pay a certain price for those 300,000 shares, and since Chris-Craft was in the nature of being a sophisticated entity, if this were their opening price, then surely there must be something beyond that, since it doesn't seem reasonable that a company would offer to pay more than they have to or want to.

Q Now, there is a letter in the record in Agreed Finding No. F-21, which is a reproduction of the letter from Piper Aircraft Corporation to stockholders of Piper, dated January 27 --

MR. PENNOYER: I will hand the Court a copy for convenience.

Q (Continuing) Mr. Pool, did you review that letter before it was sent out?

A Yes, sir.

Q Did you agree with it?

A Yes, sir.

Q And it states:

"Your board of directors has carefully studied

this offer and is convinced that it is inadequate and not in the best interests of Piper shareholders."

Now, I believe you just testified as to why you concluded it was inadequate and not in the best interests of Piper shareholders. Have you already done that?

A I believe so, plus some of the other reasons that are already stated in this letter, which I concurred in.

For example, that in reference to the Chris-Craft offer, as recently as the past eight months, the price of Piper stock on the New York Stock Exchange had been as high as $72, that we felt that the -- and this is not necessarily the comment I am going to make in reference to the 300,000 ~~shareholders~~ shares that might be tendered, but to the people who might wish to continue as investors in Piper Aircraft Corporation. We had many stockholders that had been stockholders for many years, and they were really -- I don't believe interested in selling their stock, but in holding on to it as a Piper investment. And the projections for the general aviation industry were quite bright, and that historically Piper Aircraft had participated in this growth trend of the general aviation industry in a very satisfactory manner, so that to those people I think holding their shares of Piper, we fully felt and intended it was a

good thing for them to hold on to.

Q Now, there is a finding in the record which is No. 37 and which refers to an agreement with Grumman, entered into subsequent to this letter, and in January, I believe January 28th.

Did you negotiate the terms of that Grumman agreement, or were you one of those negotiating it?

A I was one of them.

Q And where were these negotiations? Where did these negotiations take place?

A I think originally there were discussions held -- this is to the best of my memory -- at Bethpage, Long Island, and subsequently in the offices of Mudge, Rose, whatever the rest of the firm name is. They were attorneys for Grumman, in New York.

Q Now, that agreement provided, amongst other things, that Grumman had agreed to purchase 3000 shares of Piper's authorized but unissued common stock at $65 per share.

Did you believe that $65 per share was an adequate price for Piper to receive?

A I -- I don't know as I'd characterize it in that many words, and the transaction -- in such a transaction, where Piper is attempting to sell a block of stock, what Piper might feel was an adequate price would not necessarily

be the price at which they could sell such a block of stock.

The buyer in this case was a sophisticated entity. In addition, they had sophisticated advisers. Dillon, Read was their investment banker. We had advisers, First Boston, who was equally sophisticated. So that in arriving, let's say, at the draft of an agreement, as I recall, price was the last thing to be arrived at, because really it depended to a great extent on the price, the market price at the time that the transaction was consummated, so that it became more or less a -- a transaction or a computation arrived at between both our investment bankers, who were much more skilled in this area of establishing prices than either Grumman or Piper, so that in arriving at the price of $65, this was the most that Piper could get under the circumstances.

Q Now, did you believe that the agreement with Grumman was beneficial to the Piper Aircraft Corporation and its stockholders?

A Yes, sir.

Q On what basis?

A Well, number -- I won't list the factors in number order. I'll say one factor was that we had done historically in the past quite a bit of business with Grumman, they being in the nature of a prime contractor of the government and

we -eing a subcontractor of theirs, so that in performing this subcontract work for them, they gave us in effect a great deal of training -- I am speaking of production techniques,et cetera, which was of great value to us.

One of the things we did, we made canopies and windshields for military planes, which involved highly technical and precise production techniques, and they gave us considerable help in being able to perform these techniques.

I think another one at that time -- at one time was aluminum welding. So that we acquired this as a skill in our shops.

I think the personnel of Piper had gotten along well with the Grumman people at all stages or levels of supervision, et cetera, and workers. It was a feeling that if a merger could be arrived at or established, that because of the nature of the general aviation industry, if I might describe that a little bit: we were graduating from other prosaic products to more sophisticated, more complex airplanes, higher speed, greater capacity, passenger capacity, cargo capacity, et cetera, so that in the future, as our products became more complicated, we felt that we would be able to get a great deal of technical assistance from a partner such as Grumman, who had in a sense already been down these trails.

In addition, we wanted or we felt that Grumman would make a much more preferable partner than Chris-Craft.

Another factor that made Grumman seem like a more ideal partner was the fact that Grumman was, I believe, synonymous in the industry and in government circles with quality, that aligning ourselves with Grumman would certainly enhance our own image in this area.

3 In addition, we had already established that, I think -- and this is in the minutes of the board meeting -- that it would be quite possible that within a period of six months or a year we would require in the way of capitalization anywhere between $15,000,000 and $25,000,000 of additional capital. It seemed that if we could sell 300,000 shares to Grumman, that we would be killing in effect two birds with one stone and getting at least a part of our additional capitalization at that time.

Q And to what purpose was it anticipated that the additional capitalization would be needed?

A Well, in connection with the Pocono project, was one item. And there were other items in development at that time. There was the Navajo projects.

Q Which Navajo project was that?

A Oh, I believe in '69 that would have been quite

probably the pressurized Navajo project. I think there was also some work being done in engineering on the development of a turbo-prop Navajo. I believe at Vero Beech, our Vero Beech engineering department, there was a development project on what we called the Twin Cherokee PA-34 Project.

Q Now, you mentioned the Pocono project. There is an agreed finding in the record referring to a board of directors minute at a meeting of August, 1968, in which you are quoted -- you were the treasurer then -- as having made certain comments and criticisms with respect to the Pocono. Do you recall that meeting?

A Yes, sir.

Q Now, as of January, 1969, what was the status of the Pocono project?

A It was still a development project in January of '69.

Q And how about as of July?

A It was a development project.

Q What was being done at that time or during that period of time?

A Well, when I say it was a development project, engineering had employees assigned to that project, working on that project, putting input into it.

Q And apart from engineering, were there any other

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A Yes, sir.

Q Out of roughly how many airplanes in the field?

A I believe approximately 2,000.

Q During 1969 did any representatives of Chris-Craft offer you an employment contract?

A Yes, sir.

Q Who?

A We were invited -- when I say "we," W. T. Piper, Jr., Howard Piper, Walter Jamineau and myself were invited to meet with Chris-Craft representatives in New York City, and we did so. I believe present at that meeting was Mr. Siegel, Mr. Gordon and I believe Mr. Rocklis, and it was at this meeting that they had offered us a contract.

Q What was said in that connection at that meeting?

A Well, they were more or less advising us as to the salary programs, the fringe programs, etc., that they had at Chris-Craft and that, in effect, they weren't a bad bunch of people, that, gee, we ought to get to know them better and they weren't out to throw us out, and that sort of thing, but they felt we could very well work

together and that they knew very little, if anything, about running an aircraft company; that they would certainly think it to their advantage to keep us on in our capacities that we had enjoyed or had at Piper.

Q Was any specific term mentioned foremployment contracts for you?

A I can't recall that that was true.

MR. PENNOYER: No further questions.

THE COURT: We will take a short recess.

(Recess.)

CROSS-EXAMINATION

BY MR. ACKELL:

Q Mr. Pool, you mentioned a Piper aircraft called the Cherokee Twin, the P34,in your direct testimony. Is that aircraft in production?

A I believe we built our first production unit just recently.

Q Has that been sold?

A No, sir.

Q Are there any advanced sales that have already been made of the Cherokee Twin?

A Not to my knowledge.

Q Has the plane been certified by the FAA?

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they are saying, either.

Q Was it your opinion that on January 23 it would be premature to draw any conclusions with respect to opposing Chris-Craft's tender offer.

A You mean on January 23?

Q On January 23.

A Yes, I would say that would be a premature -- possibly a conclusion.

Q Did you tell that to Mr. Piper, Jr., when you discussed the rumors and you learned of the announcement that had gone across the broad tape?

A No, I certainly didn't advise Mr. Piper or say that to Mr. Piper. I think I was saying if I would arrive at a conclusion, I believe I would have felt that I didn't want to become connected with them simply because of the method used, but I don't think I had arrived at a conclusion.

Q Did you agree with the statement that appeared on the tape, that Piper had no interest at all in the tender offer for Piper stock being considered by Chris-Craft?

A I believe my innermost feelings would agree with that, without having officially arrived at a

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conclusion as an officer of Piper Aircraft.

Q On what basis did you arrive at your unofficial opinion?

A I think it is human nature to sort of resent when somebody tries to force you to do something that you may not wish to do, and I think that in the nature of acquiring 200,000 shares, saying nothing about it, of having, let's say, the intention of taking over the company or control of the company and then to call Bill Piper, Jr. , and state, "Sorry I have to do it this way, but you know, this is life," or whatever he told them, it is normal to resent that, I believe.

Q Was it your understanding on January 23 that Chris-Craft was going for control of Piper?

A I was under the impression, without being positive about it, that this was part of the conversation that Mr. Siegal had had with W. T. Piper, Jr., that he wasn't doing it just for fun or for an investment in Piper, but that this is what he was after, control.

Q Did you on January 23 read a statement in the Chris-Craft tender offer with respect to Chris-Craft having a view toward control of Piper?

A I can't recall that particular view being

expressed in there. If I were to see the tender offer, maybe I could -- probably it would speak for itself.

Q Did you on January 23 recognize the possibility that Chris-Craft might acquire 51 per cent of Piper stock through its tender offer?

A How did you express that?

MR. ACKELL: Please read the question.

(Question read.)

A No, I don't think I could truthfully state that, since I was under the impression that the tender offer was simply stating that Chris-Craft would agree to take up to 300,000 shares but only reserve the option to take shares in excess of that, and that would not give them control, under that tender offer.

Q You don't recall any discussions of the possibility at $65 a share of Chris-Craft getting over 51 per cent?

A Not necessarily in connection with the tender offer. I think the possibility of their getting 51 per cent was simply a thought in connection with their action or actions in process or in future actions. There was a possibility.

Q Was there discussion of the attractiveness

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or unattractiveness of the $65 figure?

A Most assuredly, yes.

Q Do you recall testifying on April 10, 1969, at page 109 of the transcript, as follows. This is the time period between January 23, 1969 and January 27:

"Q Were there any discussions as to whether Chris-Craft would be successful in obtaining 51 per cent of the shares of Piper?

"A I was -- it was discussed in the light of Chris-Craft gaining control.

"Q The subject was discussed as to whether or not Chris-Craft would be able to gain control?

"A That is correct.

"Q In connection with that, was there any discussion as to whether Piper shareholders would sell to Chris-Craft at $65?

"A There were certainly discussions on that subject.

"Q What was said about that?

"A Thta some people would sell and some wouldn't."

Do you recall having given that testimony?

A Yes, sir.

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Q Was it true at the time you gave it?

A Yes, sir.

Q Is it true today?

A Yes, sir. Again, there was no mention in that, as I recall your reading, as regards the tender offer -- control in regards to the tender offer.

Q What were you discussing in those conversations between January 23 and January 27?

A I can only state this in an overall summation: We were discussing Chris-Craft's actions, the possibilities, what we felt about their actions, their future actions, and so on and so forth, its effect upon the company, the stockholders.

Q Weren't you discussing how many shares might come into Chris-Craft at $65 a share?

A The subject may have been discussed. I can't recall that any conclusion could have been reached since we were not experts in this area.

Q Was there any $60 offer outstanding at that time other than the Chris-Craft tender offer?

A Not that I know of, sir.

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Q Mr. Pool, after you learned of the Chris-Craft tender offer, on January 23rd, did you stay in Lockhaven for the next few days?

A No, sir.

Q I see. Did you come to New York?

A Yes, sir.

Q Were you at Lockhaven part of the time and in New York part of the time?

A To the best of my knowledge or recall, I went to New York on the 24th. I was in New York on the 25th. I returned to Lockhaven on the 25th.

I believe that we had a board meeting that evening. The next day was a Sunday, the 26th. I am not sure whether we were in Lockhaven that day or whether I flew to Bethpage, Long Island, on that day. I think I was in Bethpage -- I know I was in Bethpage on Monday, which would have been the 27th, and I believe I was in New York on the 28th, in the offices of Grumman's attorneys, and I think I returned to Lockhaven on the 28th.

Q Before testifying today, did you check your appointment calendar or diaries to refresh your recollection as to dates?

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A Yes, sir.

Q On January 23rd did you have any discussions with Mr. Fennelly, who you said was at Lockhaven at that time?

A Yes, sir.

Q Did you have any discussions on January 23rd with Mr. Cornwell of D. F. King Company?

A Not that I recall on January 23rd.

Q When if at all during that period did you have any discussions with Mr. Deming of the Chadbourne firm?

A Well, I think -- I think Mr. Deming was present at our meeting in the offices of Mudge, Rose, and whatever their names were, in New York. I don't -- I can't recall the sequence of events as to when we first talked to Mr. Deming of Chadbourne.

Q Mr. Fennelly is an accountant, is that correct?

A That's correct. He is a partner with Arthur Young & Company.

Q Did you discuss with him the desirability of the Chris-Craft tender offer on January 23rd?

A I can't recall specifically discussing it with any particular individual. There seemed to be a large group of people milling around and talking and discussing,

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so that who suggested who or who talked to whom, it's rather -- I can't recall.

Q Do you recall if Mr. Eberling was present at any of those conversations on the 23rd of January?

A Not that I can recall. Normally he wouldn't have been.

Q What is Mr. Eberling's position in Piper?

A Assistant comptroller.

Q Does he work under your supervision?

A Yes, sir.

Q Of what Mr. Catoni's position, sir, or what was it at that time?

A Comptroller.

Q Does he also work under your supervision?

A Yes, sir.

Q Now you testified that you gathered together materials concerning Chris-Craft on January 23rd and 24th. What materials were you referring to, sir?

A We had -- there was a subscription around the office to Value Line. We had the Value Line reports on Chris-Craft. We got a-hold of Moody's.

Were you specifically stating on a certain day or --

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Q The 23rd or the 24th -- Thursday, the 23rd, or Friday, the 24th.

A I think we went to New York on the 24th and we had -- we got a report from Boston, on First Boston, on Chris-Craft. I believe we got some further information from Arthur Young & Company.

Q What kind of a report did you get from First Boston? Annual report?

A No. This was a report comparing our capital structure and balance sheet items, mostly, ratios with Piper, with Beech and Cessna.

Q And, now, on those days did you also accumulate data concerning Piper?

A Data concerning Piper?

Q Yes, sir.

A Well, my office seems to be the repository for data concerning Piper. I don't quite understand what you mean.

Did we collect it? We have it in our files all the way.

Q Well, during the meetings on January 23rd and 24th, did you have in your possession any financial information concerning Piper?

A Yes, sir.

Q What did you have?

A Well, we had all the company's information on Piper Aircraft.

Q What kind of information is that, sir?

A Are you requesting that I give you a list of all the financial information about Piper Aircraft which I as treasurer would have in my possession -- work sheets, inventories and --

Q Absolutely not. I am asking you what financial information did you extract from your files for the purpose of discussing it with the other people present on January 23rd and January 24th?

A I don't think physically I would have extracted any of it from my files.

Q Now on January 23rd, do you know if the first quarter financial statement for Piper Aircraft was available at Piper?

A I only subsequently found this out, and when I say "subsequently," I would say subsequent to Mr. Catoni's and Mr. Eberling's deposition in the Middle District Court.

I didn't know it prior to that.

Q And is the substance of their depositions in the

Middle District Court that the financial statement for the first quarter had been submitted to be printed at Piper on January 21st and that the printing of that statement had been completed by January 23rd?

A That I couldn't attest to. I --

MR. ACKELL: I ask that this be marked Exhibit 117 for identification.

(Plaintiff Exhibit 117 was marked for identification.)

Q I show you Plaintiff Exhibit 117 for identification and I ask you if you can identify that document.

A This seems to be a printing order, which would be prepared by the printing department, stating that they were to print 38 copies of a report of six pages plus cover, material wanted immediately.

Q What is the date of that --

A Financial statement.

Q What is the date of that?

A The date is January 21, 1969.

Q Now would you turn to the second page of that exhibit, please, sir, and tell me if the printing of the financial statement appears on there -- the printing data?

A Yes, sir.

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Q And what does it show?

A It shows project number, financial statement, six sheets, 38 copies, for accounting, N-121, requested immediately. Dates completed, 1/23.

MR. ACKELL: I offer Exhibit 117 for identification into evidence.

MR. PENNOYER: No objection.

(Plaintiff Exhibit 117 for identification received in evidence.)

Q On January 23rd, the date that Exhibit 117 indicates the financial statement had been printed, did you ask Mr. Eberling to update your financials?

A No, sir.

Q Now were the financials that you were using with the persons with whom you had discussions on the 23rd and the 24th financials which preceded the first quarter financials?

A I think I told you that I did not pull any information from my files to hold discussions with other people on January 23rd.

Now I don't know w quite what you are asking.

Q Well, over that weekend.

A Did I update the information in my mind? Is

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that what you are saying, or what?

Q Or any other way, sir, over that weekend.

A No, sir.

Q Over that entire weekend, you never consulted with Mr. Eberling as to whether there were any more current financials than you had seen up to that time?

A No, sir.

Q I believe you testified that you, among other people, approved the January 27, 1969, letter by Piper to its shareholders, which is included in finding No. 21.

A Yes, sir.

Q And were you consulted on the portion of that letter that reads:

"3. Piper sales increased more than 20 per cent in fiscal 1968 over the prior year, and its earnings per share were approximately 29 per cent higher."

A Was I consulted?

Q Yes.

A In connection with that?

Q Yes, sir.

A I would question the term "consulted." The facts spoke for themselves. The annual report for 1968 had already been published. This figure -- the figures spoke

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for themselves. I don't think it was necessary for them to consult me on them.

Q Did you talk about that statement with anybody prior to January 27th or on January 27th?

A Oh, I believe I admitted that I was in on the discussions in relation to that letter, so that certainly I had knowledge and approved the statement.

Q You never suggested that the current financials for the first quarter of 1969 should be consulted?

A No, sir.

Q Did anybody make such a suggestion?

A Not that I recall.

Q Now you also indicated that the materials you gathered on Chris-Craft indicated, among other things, that Chris-Craft's growth had been stopped under the management of Herbert Siegel, is that correct?

A Yes, sir.

Q And did you make any comparison at that time of Chris-Craft's growth under Mr. Siegel as compared to its growth under anybody before Mr. Siegel?

A I believe that was the gist of our investigations that arrived at the conclusions that we arrived at.

Q How did you arrive at the conclusion that the growth had stopped under Mr. Siegel? What did you have?

A We had financial reports, as I stated, in connection with Chris-Craft.

Q Well, how had the growth stopped? In what respect?

A I only -- at this point in time I only remember the conclusions. I don't remember how the studies were conducted,or the details, in arriving at those conclusions. I only remember the conclusions.

Q Do you also remember the conclusions, as I believe you stated it, that Chris-Craft's debt had been completely used up? Is that correct?

A Yes.

Q Do you recall what Chris-Craft's debt was at that time?

A No. It seems to me that I recall in excess of a hundred million, or something to that extent.

Q On May 8, 1969, do you know what Bangor Punta's debt was?

THE COURT: May 8th?

MR. ACKELL: 1969.

A There again, to the best of my memory, I would think that it was also in excess of a hundred million.

Q You considered it desirable, nonetheless, for Bangor Punta and Piper to merge even though Bangor Punta's

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debt had also been completely used up, sir?

A The difference --

MR. RYAN: I object to the form of that question.

THE COURT: Sustained.

Q Did you reach any conclusions on May 8, 1969, with respect to Bangor Punta's debt?

A I believe that although we were aware that they had a large debt, as a percentage of their total capitalization, I think we also felt that we were dealing with people we could trust.

In other words, we had mutually agreed to sit and talk and negotiate, which was an entirely different situation than with the Chris-Craft people.

Q Under those circumstances, the debt was not as important to you, is that correct?

A It wasn't in the sense of my prior testimony, that we felt that there was a distinct possibility that Chris-Craft would avail itself of Piper Aircraft Corporations debt capacity, unused debt capacity, for its own purposes, to the detriment of the future growth of Piper Aircraft.

We didn't feel that this would be true in connection with the Bangor Punta partnership.

***

Q Perhaps the figures I have are wrong.

It is my understanding that you sold on July 8, 1968, 1000 shares at $63.50.

A That could very well be. I sold, I believe, in April, in June and in July.

Q When you received $63.50, did you consider that to be a fair price for your Piper stock?

A I don't think the term "fair price" entered my mind. It was what the market place paid for my stock.

Q But you were satisfied at that time with the price you received?

A Well, I am not quite sure that I was satisfied.

Q You decided to sell it when the market would bring in $63.50, correct?

A Yes, but I might have been dissatisfied that maybe it should have been $65 or maybe I could have gotten $65.

Q Prior to January 27, 1969, were you told by any representatives of First Boston that $65 a share was a fair price for Piper stock?

A No, sir.

Q Were you told by any representatives of First Boston that $65 was a fair price for an individual tendering his Piper stock to Chris-Craft?

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A No, sir.

Q Were you given any advice by First Boston with respect to whether $65 a share was a fair or an unfair price?

A No, sir.

Q Or an adequate or an inadequate price?

A I would have been under the impression that our advisors were in agreement that $65 was not an acceptable offer. I don't think the term "price" was used. At least First Boston didn't object, to my knowledge, to us, that the wording was not an acceptable offer, was not all right.

I am not aware that they objected to that.

Q Did you consult them as to whether that was or was not all right?

A To the best of my memory, I can't specifically state that we specifically consulted them. I am under the impression that they were part of our advisor group and we certainly must have talked to them.

All I am saying is that I can't recall that they objected.

Q Before the January 27th letter went out, had you been given any advice from First Boston with respect to $65?

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A Well, here again you are trying --

Q Would you answer my question, please.

A Yes, sir. I can't specifically state that we received it directly from them, that I remember that. I remember we were talking to First Boston, we were talking to Dudley King, we were talking to our attorneys, we were talking to ourselves, if you will.

The decision finally rests, I am sure, with the management, the officers of Piper Aircraft, or the directors, and I, for one, didn't feel that it was an acceptable offer.

We sent the letter and, to the best of my memory, our advisors agreed to it or approved it -- at least they didn't verbally, to my knowledge, disapprove of it.

Q I am referring to your testimony on April 10, 1969, pages 137 and 138, which reads as follows:

"Q How was the price at which Grumman was to buy 300,000 shares of Piper determined?

"A I believe this was determined by the market at the time.

"Q And what price was arrived at?

"A $65.

"Q In your judgment, was that an adequate and fair price?

"A In my judgment, it rested on the advice of our investment bankers.

"Q Which was what?

"A First Boston Corporation.

"Q What was the advice?

"A $65 was an equitable price.

"Q And when did you receive that advice from your investment bankers or when did Piper receive that advice from the investment bankers?

"A I am not sure of the date.

"Q But that was before January 27th?

"A I believe so."

Do you recall having given thattestimony?

A Yes, sir.

Q Was it true when you gave it?

A Yes, sir.

Q Is it true today?

A Yes, sir.

Q Having received that advice from First Boston you nonetheless regarded the Chris-Craft $65 as inadequate, sir?

MR. PENNOYER: Objection, your Honor. The transcript as read by Mr. Ackell indicates that it was in connection with the Grumman transaction that that $65

was discussed.

Now Mr. Ackell's question assumes the $65 price and --

THE COURT: Let me hear the question again, please.

(Question read.)

THE COURT: He may answer the question. It is not referring to any particular testimony.

A Yes, sir.

Q For what reasons was the Chris-Craft $65 inadequate?

A I don't believe that the transactions were similar. In the case of the Chris-Craft transaction, it is the case of, let's say, a buyer who is initiating the action -- it is a sophisticated buyer and he is trying to entice a group of stockholders to sell to him, or it, their shares.

The implication is that if a company such as Chris-Craft is to offer a price, to pay a price for those shares, that they are going to offer the lowest price at which they can or think they can attract the shares.

If Piper is going to contest what it thinks is a takeover attempt, a stockholder I think would normally feel that there was a better price than $65 in

the offing.

In the case of the transaction with Grumman, Piper is in the nature of a supplicant: it is trying to sell something to a buyer who could be classified as very sophisticated and with sophisticated counsel.

So that Piper is trying to sell a block of stock to someone who certainly is not going to pay any more than they have to, certainly no more than they feel they can defend to their stockholders, and it is going to be subject to the market at the time more so than the other transaction.

So that as part of any agreement reached on the sale and purchase of the shares, the market place or the price was the last thing to be agreed upon, and this was more or less worked out with the investment bankers and submitted to the two companies for approval.

In addition, there were 300,000 shares being added to the capital structure of Piper Aircraft Corporation which would not necessarily add to the market value. It might dilute it.

Q Are you saying that you would not have felt $70 to be inadequate had Chris-Craft offered $70 per share?

A That is in effect what I am saying, sir.

Subsequent events I believe, have proved this to be true.

Q The $65 figure with Grumman had been discussed before January 27, Mr. Pool?

A I am not quite sure of the date when it was first discussed.

Q Do you recall whether in your discussions prior to sending the January 27 letter whether the distinction between $65, as you have described it, in a Grumman-type transaction and $65 to an individual shareholder should be referred to in the letter?

A I am not sure in point of time just when the discussion would have been had. I think the subject was certainly discussed at the time that the price was set with Grumman.

I can't say how much prior to that, if any prior to that, it was discussed.

Q If the Grumman issuance might have diluted the value of the stock, might not $65 have been more attractive to an individual shareholder?

A All I am saying is that Chris-Craft, if Chris-Craft were offering $65 a share and their offer was being contested, that in such a context a shareholder would logically look forward to getting a better price

by Chris-Craft and, in addition, I said subsequent events proved this.

Some stockholders got as high as $84 --

Q I am not talking about subsequent events. I am talking about January 27th.

A I am simply offering it as confirmation of our logica.

Q Would you answer the prior question, as to whether the Grumman issuance might have diluted the value of the stock and then wasn't $65 to shareholders a more attractive offer?

A I don't think that this particular consideration entered into it. We are talking about --

What was the phrase used in the letter -- as to the adequacy of the offer -- that no matter what effect the Grumman transaction might have had on the market as far as dilution effect is concerned, that it still remained a logical implication that a stockholder could hope to get more than $65.

Q The letter said:

"Your board of directors has carefully studied this offer and is convinced that it is inadequate and not in the best interests of Piper's shareholders."

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Was the study that you referred to in that letter the study that you have just testified to with respect to the $65 value?

MR. PENNOYER: Objection.

THE COURT: I don't recall any talk of studies.

What you are doing is comparing efforts to market some stock with an effort to purchase some stock. The one has an association with a company that is integrating its facilities and the other is an entirely different affair.

I don't know what this argument is about.

Q Was the basis of the statement that I read to you advice received from the First Boston Corporation?

A I think I previously testified that I can no longer recall specific advice being given by each of our advisors. I can only recall in substance that we have had various advisors, that we sat down with those advisors and at what point in time I do not remember. I simply remember that we arrived at that conclusion and we arrived at sending a letter that we approved of it. If any of our advisors did not agree with the substance in that January 27th letter, I was not made aware of their objections.

I am making the distinction that I might not have

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Q Did anyone on the Piper side of that discussion suggest that the offer be extended to more than 300,000 shares?

A Not that I recall.

Q Were the Grumman negotiations stimulated by the Chris-Craft tender offer?

A I believe so.

Q What was the purpose of the Grumman transaction, as you understood it, sir?

A The purpose was severalfold: I believe we did not wish an affiliation with the Chris-Craft people, that we were searching for an affiliation that would be more palatable to us; that we felt that it would be of greater advantage and benefit to the company and the shareholders --

Should I repeat my prior testimony now on direct --

Q Not if you expressed all the considerations with respect to purpose before.

A I believe I expressed that before.

Q Was the guiding motive behind that transaction the desire to head off an acquisition of Piper by Chris-Craft?

A I don't quite understand the ramifications of

the word "guiding."

I can say that it was stimulated by such a desire but I can't say that I feel this became the overriding factor. I think the other factorswere equally important.

They were a desirable partner, in our eyes, and, in addition, we could raise additional capital that way.

They were all important reasons to us.

Q Is Mr. Ray Haas an employee of Piper?

A The name escapes me. I don't recall it.

Q Is Mr. D. S. Bunder an employee of Piper?

A No, sir.

Q Do you know that Mr. Bunder is employed by Arthur Young?

A Yes, sir, he is.

Q At the time you were negotiating the Grumman transaction were you familiar with the listing agreement of Piper with the New York Stock Exchange?

A I am not going to admit being familiar with it. I was aware of it.

Whether I was aware of all the legal aspects of it, I don't recall.

Q Did you review the listing agreement during that

period?

A I recall reading the listing agreement during that period?

A I recall reading the listing agreement.

As to point in when, the date, when I did it, I can't recall.

Q I believe you testified that one of the reasons that the Grumman transaction was attractive to you was that it would bring in additional funds to the company, and I think you stated $18 million.

A 300,000 times 65.

Q Were there any provisions in the Grumman agreement with respect to how Piper would use those funds?

A Yes, sir.

Q What were those provisions?

A To the best of my memory at this late date, I believe that we were to hold those funds in, let's say, some sort of escrow -- in other words, not mingle them with working capital of the corporation for some period of time during which investigation would be made into the merger possibilities between the two companies.

Q I believe you testified on direct that that additional money would be desirable for use in connection with the Pocono project, the Navajo turbo project, and the

P-34 twin-Cherokee, is that correct?

A Yes, sir.

Q Under the provisions of the Grumman agreement, if you understood them, could the funds be used for those projects?

A Well, I think in prior testimony I had stated that in the minutes of a board meeting either on October of 1968 or November of 1968 it was stated that the requirement for 15 to 25 million would not possibly be needed before six months to a year in the future.

Q Was there another provision in the Grumman agreement that gave Grumman the right to put back the stock to Piper?

A Yes, sir.

Q Was that provision discussed in your presence before January 27th?

A Yes, sir.

Q Did you read the January 29th announcement made by Piper with respect to Grumman, which is in finding 37?

A May I read it?

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Q Yes.

A Yes, sir?

Q Did you discuss with anybody the advisability of referring to the put provision in that announcement?

A No; I don't recall.

Q Did you discuss with anybody the desirability of referring to the requirement that funds be segregated according to the agreement?

A No.

Q Now, did you after the Grumman agreement of January 28th participate in any discussions with the New York Stock Exchange concerning the listing of the 300,000 shares?

A Did I -- would you repeat the question?

MR. ACKELL: Read the question, please.

(Question read.)

A No, sir.

Q You don't recall having been present at a meeting with Mr. Byers and Mr. Deming at the New York Stock Exchange?

A I don't recall that I was present at such a meeting.

Q Do you recall ever having been shown a draft listing agreement with respect to the 300,000 shares?

A No; I don't recall.

Q Mr. Pool, did you at a later time discuss with any-

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body a listing application for the issuance of approximately 47,000 Piper shares in connection with the U.S. Concrete and Southply transactions?

A I believe so, as I recall, yes.

Q When for the first time did you discuss the listing application?

A I can't recall that date.

Q Do you recall whether the listing application was filed on March 24, 1969?

A No,sir; I don't recall.

Q Do you recall how many days after the agreement with U.S. Concrete and Southply had been reached that the listing application was filed?

A No, sir; I don't recall.

Q Do you recall the result of the filing of the listing application?

A Yes. I think, as I recall, the New York Stock Exchange would not agree to it.

Q Now, as of March 24, 1969, were you familiar with the provisions of Piper's listing agreement with the New York Stock Exchange?

A Again, I can't equate to that particular date.

Q Do you know who Piper's transfer agent was in March, 1969?

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A Manufacturers Hanover.

Q Do you know who its registrar was?

A Bankers Trust.

Q Did Piper issue approximately 470,000 shares in March, 1969?

A To my recollection, we did.

Q Did Manufacturers act as the transfer agent?

A To the best of my recollection, I don't believe the Bankers Trust would register the shares.

MR. ACKELL: Would you read back the answer?

(Answer read.)

Q And Manufacturers did not issue the shares; is that correct, sir?

A I am afraid my memory fails me. I think you are asking a technical part of the question. I am not sure of the answer. I would be guessing or assuming.

Q Well, did Piper Aircraft act as its own transfer agent and as its own registrar in the issuance of that stock?

A I think possibly you are correct.

Q Did that event precipitate the delisting of Piper stock?

A As to -- I don't believe I am legally qualified whether that event precipitated it. I think that event or others precipitated something in the delisting.

Q You don't know whether that report was based solely on the statistics, do you, sir?

A No, sir, I do not.

Q Do you recall wind tunnel tests having been conducted at Langley Field, apart from the NASA report we have spoken about?

A In my memory that was one of the tests I was talking about. Whatever the name of who conducted this, I don't know.

Q Do you know when?

A No, sir.

Q What year?

A No, sir.

Q Did you tender any shares of Piper stock to Bangor Punta under its exchange offer?

A Yes, sir .

Q 1900 shares?

A 2,000.

Q Did you report a profit for that transaction when you filed your tax return for 1969?

MR. PENNOYER: Objection.

THE COURT: Sustained.

MR. ACKELL: Your Honor, the purpose of this

inquiry is with respect to the value placed on the stock by Mr. Pool at the time of his declaration of income for the year, which is relevant to the issue whether in fact the package of Bangor Punta securities had a value of $80 a share.

THE COURT: Objection sustained.

Q Do you know if any other employees or officers of Piper Aircraft tendered stock to Bangor Punta under its exchange offer?

A Yes, sir.

Q Who?

A Well, I believe W. T. Piper, Jr., Howard Piper --

THE COURT: Please raise your voice a little bit, Mr. Pool.

Q Outside the family. I am speaking of the general exchange offer.

A Walter Jamineau.

Q Do you know approximately how many shares?

A No, sir.

Q Any other employees or officers?

A Other employees?

Q Approximately how many, sir.

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A You mean how many other employees?

Q Yes, sir.

A I couldn't hazard a guess. I really couldn't.

Q Were there more than 20?

A I couldn't hazard a guess, sir.

Q Do you have any idea of the number of shares that were tendered by employees of Piper?

A No, sir.

MR. ACKELL: Please mark this for identification, please.

(Plaintiff's Exhibit 119 was marked for identification.)

Q Do you know whether after the close of the Bangor Punta and Chris-Craft exchange offers any employees of Piper sold their stock for cash to Bangor Punta?

A No, sir, I don't.

Q I show you Exhibit 119 for identification and ask you if looking over that list would refresh your recollection as to any people whom you know who tendered or sold their stock for cash to Bangor Punta.

A Would you repeat that question, please?

Q I will change the question: Can you identify any of the names on that list?

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A Josephson & Company -- do I identify them?

Q No, if you can identify them as employees of Piper, or officers.

A Oh, I see. I can't identify a name on the entire list as being a Piper employee.

Q Can you identify any as being former directors of Piper or dealers of Piper? You have reviewed the list now, haven't you?

A YEs, sir.

Q Do you recognize any of them --

A I was reviewing the list with reference to being a Piper employee. Mr. N. J. Greene was a director of Piper Aircraft Corporation. That is all.

Q Are there any dealers or distributors of Piper Products that you recognized when you reviewed the list?

A No, sir.

Q Any former employees of Piper?

A No, sir.

Q Former officers?

A No, sir.

MR. ACKELL: No further questions.

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REDIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Pool, were you aware of the first fiscal quarter sales and earnings figures for Piper prior to January 27, which is the date of the letter to shareholders?

A No, sir.

Q What, in your view, is the significance of a fiscal quarter's sales and earnings figure?

A It has relatively small significance in relation to the year as a whole.

MR. PENNOYER: No further questions.

THE COURT: Anybody else?

MR. RYAN: I have no questions, your Honor.

THE COURT: Thank you. You are excused.

(Witness excused.)

MR. PENNOYER: Your Honor, at this time Piper rests. I will say Mr. William Piper is in the room and I had told Mr. Liman of my intention to call him, I told him this yesterday, and I informed him at lunch today that I had changed my mind and I feel that anything he would bring out would be cumulative and I am interested in moving this thing along.

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However, should Mr. Liman wish to call Mr. Piper in his rebuttal case, I would request that he do so now. I don't think Mr. Ryan or Mr. Arning would object to that procedure, if that is all right with your Honor too.

THE COURT: That is entirely up to Mr. Liman.

MR. LIMAN: I would like to call him. It is just a matter of suiting the convenience: He is here now and I will be brief with him.

THE COURT: You prefer to call him now?

MR. LIMAN: Yes, your Honor.

THE COURT: We will take him out of order and consider this part of plaintiff's rebuttal case.

W I L L I A M T. P I P E R, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Piper, you were president of the Piper Aircraft Corporation in 1969?

A That's correct.

Q When had you become president?

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A I was actually president and chairman of the board in 1969. I became president approximately two years prior to that time and I maintained the dual position until about September of 1969, at which time I became the chairman of the board and a Mr. Mergen became president.

Q And your dad preceded you as president, am I correct?

A That is correct.

Q And is it also correct you became chairman of Piper's board on your father's retirement in March of 1969, and your dad became chairman emeritus on that occasion?

A That's right.

Q You are familiar with the May 8 press release of Bangor Punta and Piper?

A Very much so.

Q Did you approve that press release before it was issued?

A Yes.

Q At the time that press release was issued had you been told by the First Boston Corporation what the family package was worth?

A Only in approximate figures. I don't think exactly to the penny, no.

Q Were you told that it was worth approximately $70 to $72 a share?

A That's right.

Q Did you tell Bangor ~~Piper~~ PUNTA that you would recommend the Bangor ~~Piper~~ PUNTA offer ~~Bangor Punta~~ to your shareholders?

A Yes.

Q Can you tell me whether when the Chris-Craft exchange offer became effective you sent a telegram to your shareholders recommending that they reject the Chris-Craft offer?

A I don't remember whether we sent a wire or not. We certainly had correspondence with the shareholders and it may have been by letter -- I am not sure of the wire.

Q If I show you Exhibit 120 for identification, can you identify it? It is a document produced by Piper.

A It looks familiar. I would have to say that this was a wire that I sent, or the company sent.

MR. LIMAN: I will offer it in evidence.

MR. PENNOYER: No objection.

(Plaintiff's Exhibit 120 was received in

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evidence.)

Q Do you know who was on the executive committee at the time you sent that telegram?

A I believe Charles Pool, Walter Jamineau, I, my brother Howard, and probably my brother Tom.

Q All directors other than the Chris-Craft representatives?

A I believe so.

Q At the time that you sent that telegram did you know what the terms of the Chris-Craft offer were?

A The date on the wire is May 17 and I don't recall the date of their exchange offer, so I would have to say I don't remember that.

Q If I told you their exchange offer became effective on May 15 and was announced with $10 additional cash on May 16, would that refresh your recollection?

A No.

Q Is it possible that you sent a telegram urging your shareholders to reject Chris-Craft's exchange offer without knowing what the offer terms were?

A No, I didn't say that. You asked me if I

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remembered the terms, and I said I didn't.

Q Is it your testimony that at the time you sent that telegram you knew what the terms of the offer were?

A I am quite sure we would have.

Q Did you have an opinion as to what the worth of their offer was?

A I don't remember at this time what the value was, but I am sure that at that time we must have had an idea. I don't recall what the figure was.

Q Do you recall being examined by me in Lock Haven?

A That's correct, surely.

Q Do you recall on June 16, 1969 being asked the following questions and giving the following answers, page 73:

"Q Did you ever discuss with First Boston that you had a low opinion of warrants that Chris-Craft was offering?

"A No, I never discussed Chris-Craft's warrants with anybody.

"Q You have no recollection of discussing Chris-Craft's warrants with First Boston?

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"A I know nothing about Chris-Craft's warrants. I know nothing about what they are offering or their value.

"Q Are you saying you did not inform yourself of the package they were offering?

"A I have seen the package in their offering.

"Q You never made any inquiries as to what the value is?

"A I am not interested in exchanging my stock with Chris-Craft, so why should I stop and analyze their package? I have no idea what their package was."

Do you remember giving those answers --

A No, I don't remember those exact words, but I think that is quite similar to what I said a moment ago, that I don't remember what the value of the package was. It has been approximately a year and three quarters ago and if you have the correct testimony of my words there, I am assuming what you read is what I stated, but I still don't remember what the package --

Q I am not asking you today. These questions were put to you in June of 1969.

A If I didn't know what the package was in June of 69, I certainly don't know what it was today.

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Q When you gave your testimony in June of 1969 did you tell the truth?

A Yes, indeed.

Q Was it true when you said "I know nothing about Chris-Craft's warrants, I know nothing about what they are offering or their value"?

A I can't say that that would be entirely right, because I would have to know something about it. I would know they were at least making an offer.

Q You knew that much?

A I knew that much, and that is about all. Whatever I said then was true and I don't believe that I ever actually studied or asked First Boston or anyone else to give us an exact down to the penny price of what their package was worth.

Q Did you consult with First Boston on this telegram?

A I am quite sure we did because we didn't move on any communications, whether they be letters or wires, without consultation with all of our legal, finance and probably accounting counsel.

Q Did you feel when you sent out that telegram that you had sufficient knowledge to recommend to Piper's

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shareholders not to accept Chris-Craft's exchange offer?

A I sent and signed the wire, you must remember, as the president of the executive committee and we rely almost wholly on the advice of our finance and legal counsel for information, and in fact I would say that the legal counsel and the finance counsel drew the wire and not I.

Q By legal counsel you mean Chadbourne?

A The Chadbourne firm, and First Boston for the finance counsel.

Q I direct your attention to testimony you gave at pages 136 and 137 of the record. Again, this was in June of 1969. I take it your memory in June of these events was better then than it is today?

A I don't know. What is the subject? On some subjects it is good and on other subjects it isn't.

Q I asked you these questions:

"Q Have you told any shareholders to wait before taking action on the Chris-Craft exchange offer to see whether the Bangor registration statement will become effective?

"A I am trying to think of a specific example.

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I don't think that we have stated it that way.

"Q Have you said it in some other way, conveying the same intent?

"A Well, let me put it this way: We have shareholders calling us on regular occasions, that is, practically no day goes by that a half dozen shareholders won't call and say, in so many words 'I am utterly confused. What am I supposed to do?' We have been very careful to take a very neutral position and tell them this was a decision they themselves had to make and that we were not in a position to be recommending they sell their stock, thatthey exchange it for Chris-Craft, it was up to them.

"We have learned, not on this occasion, but we have learned from experience and on past occasion, a year or two, three, four, years ago, where some shareholder called and said should I sell my stock when your stock is up farily well and you say no and by this time it takes a good plunge and you get your neck out a mile. So we have learned not to try to steer the shareholders in any direction.

"When this registration becomes effective, I must cornainly will start telling the shareholders what

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our recommendations will be.

"Q And have you formed those recommendations?

"A I have formed them.

"Q Those recommendations?

"A You bet I have, but we are keeping it to ourselves."

Do you remember giving those answers to those questions?

A No, but it sounds like something I might say.

Q Was it true?

A I think bascially that is the correct attitude for any company official to take.

Q If it is the correct attitude that a president of a public company should take, is it the policy that you followed in this case?

A I think so.

Q And you felt that your sending a wire to your shareholders not to accept the Chris-Craft exchange offer was an execution of that policy?

A I think, if I read that wire correctly, it asks them to withhold their judgment until they heard from us further. Is that not correct?

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Q It starts off -- Iwill read it to you -- "We strongly urge you to reject the Chris-Craft exchange offer stop. New and important information concerning your investment is being prepared and will be mailed to you by Piper Aircraft as soon as possible. On behafl of executive committee of Piper Aircraft Corporation, W. T. Piper, Jr."

A I think that answers your question. It says we suggest they reject it until they get further information from us so that they can weigh their decision,and I think that isexactly the type of testimony I gave you in my deposition.

Q That is what you intended to convey?

A That's correct.

Q Incidentally, I didn't ask you about your educational background, but you are a graduate of Harvard College, are you not?

A Yes.

Q Mr. Piper, you recall the day that Mr. Siegel called you and told you he was making a tender offer for your company?

A Yes.

Q Did you receive a call after that from the

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Dow Jones?

A I don't recall. I don't know. I don't remember.

Q Do you have any recollection of expressing a view to the Dow Jones immediately after you learned of Chris-Craft's tender offer?

A No.

MR. PENNOYER: Your Honor, at this point I object as not being the proper subject for rebuttal testimony.

THE COURT: Overruled.

Q Did you read the Wall Street Journal the day after the tender offer?

A I can't swear that I did, but I am sure that I must have, because we tried to keep current on most of the publicity and the information.

Q Specifically, Mr. Piper, did you say a Dow Jones reporter, and see if this refreshes your recollection, "They have called and said they would put out tenders for our stock. We have no interest in it at all. We are opposed to it."

Did you say that?

A I don't know. I don't remember that.

Q You don't deny it, but you don't remember it?

A That's correct.

Q You have been sitting here while Mr. Pool testified?

A Yes.

Q You heard him discuss the Grumman agreement?

A Yes.

Q You heard him state various reasons why he regarded it as desirable to enter into the agreement with Grumman?

A Yes.

Q Did you participate in those negotiations with Grumman?

A Yes.

Q Did you understand that the agreement that was being proposed in the negotiations involved a right by Grumman to put the shares back ot Piper after a specified pericd of time elapsed?

A Correct, for certain reasons.

Q When you say for certain reasons, this provision was part of the negotiation between you and Grumman, am I correct?

A This was a part of the agreement between Grumman and Piper.

Q And is it a fact that Grumman said in these negotiations leading up to the agreement that they were not prepared to decide at that point to merge with Piper?

A I don't know that Grumman stated it in that way, but it said that they would like an opportunity to discuss with Piper the benefits and the -- the benefits of a merger and to determine if a merger would be to the best interests of both parties.

Q And what was the purpose of the put arrangement in the agreement?

A In the event that a merger would not go through.

Q And you understood that in the event that they decided not to agree to merge with you or you decided against the merger, that the shares could be put back to you at their original cost?

A Or if for any reason -- any other reason a merger would not be consummated, the Grumman had the option to take back the stock. That's correct.

Q Now was the reason that you chose to issue the shares to Grumman before a decision was made on the merger that it would keep Chris-Craft from getting control in the interim?

A Certainly no argument about that. We were taking what steps we could to protect the -- what we felt was the interests of our shareholders. We had a number of other good

reasons, which Mr. Pool enumerated, including the need for cash and including the benefits which could be derived from a merger of Grumman and Piper. But I can't deny that it was also a protective device on our part to forestall a take-over on the part of Chris-Craft.

Q Well, did you understand that you couldn't use this cash during the period that Grumman had its right, its put?

A Yes.

Q And did you understand that if Grumman chose to exercise this put, you would have to give back the cash?

A Correct. And if we should have decided that we didn't want to go through with the merger, they were free to take back the stock or give us back the stock, and we would give them back the cash.

Q Do you remember giving this conversation concerning the purposes of your Grumman transaction, at page 112 of your testimony on April 16, 1969:

"Q In the light of the fact it was going to take a period of time before a meaningful judgment could be made as to the advisability of the merger, what was the purpose of selling Grumman 300,000 shares in late January?

"A This would bind the agreement, and it would give us additional shares, which might make the further tender

offer of Chris-Craft or the tender offer of Chris-Craft less attractive to our shareholders."

Do you remember giving that testimony?

A No, but it sounds reasonable.

Q You say it sounds --

A I think I mentioned here that part of the reason for trying to merge with Grumman was to defeat a Chris-Craft takeover offer, which would be saying in another way just what you have read there.

Q Well, I wasn't asking you about the reasons for merging with Grumman. I was asking you about the reasons for issuing shares before Grumman had made up its mind as to whether a merger was feasible.

A Well, I think it was just evidence of good faith on Grumman's part.

Q And was the testimony which I just read to you truthful as to your purpose for issuing these shares?

A I thought I just answered that by saying that part of the reason for trying to effect a merger with Grumman was to defeat a take-over on the part of Chris-Craft, which I think is the same answer.

Q Do you remember why the Grumman transaction was called off?

A I believe the principal reason, if not the only

reason, was that the New York Stock Eschange would not list the shares.

Q And is it a fact that after the Grumman transaction was cancelled you chose to get into the concrete business and the plywood business?

A That's correct.

Q And that also was in order to keep Chris-Craft from obtaining control of your company?

A That's correct.

Q And was it a fact that you decided to issue your shares as your own transfer agent?

A I would like to enlarge on your first question. It certainly is one of the reasons. The other reason is that we -- the other reasons are that we again felt that in addition to additional shares outstanding, which would make it more difficult for Chris-Craft to take over, it was also the -- any benefits that could be derived from a different type of an operation, from additional earnings which we believed were imminent from these two acquisitions. We have been criticized in past years for sticking solely to the aircraft industry, and this was an opportunity for us to diversify our operations, and I think it was a combination of reasons for it.

Q And you personally, Mr. Piper, were opposed to the

concept of diversification, weren't you? 2117 A

A No. I don't think so. I don't know of any occasions.

Q Mr. Piper, did you or did you not issue these shares without calling upon your regular transfer agent to do so?

A I'm not -- that's not exactly clear in my mind. I recall signing certificates which were given to the -- I believe it was Pittsburgh Coke & Chemical Company, in exchange for the stock in the two other companies. But whether they werecleared through the transfer agent or the registrar, on that point I'm not entirely clear.

Q You mean, even today, after the delisting proceeding by the Stock Exchange, you don't recall whether you issued those shares directly, yourself, without your transfer agent or registrar?

A You are correct.

Q Was there discussion at the time that you issued the shares of the listing requirements of the Stock Exchange in the light of the fact that the Stock Exchange had refused to list the Grumman shares?

A I don't recall any, but here again we would be relying entirely on our legal counsel, our financial counsel, and in this case also on Pittsburgh Coke & Chemical's counsel,

and this is completely out of our jurisdiction, and whatever the recommendations are, we certainly weren't in a position to debate them.

Q Who recommended this transaction to you, Mr. Piper?

A Originally, I believe the Pittsburgh National Bank, as our principal banking source, funds source, recommended that we talk to the Pittsburgh Coke & Chemical, and beyond that I would say that certainly FirstBoston was in on all the proceedings.

Q Now, it was after that transaction was annulled that you decided that you would enter into an agreement with Bangor Punta;is that correct?

A That's right. How long after I don't remember, but it was subsequent.

Q And had you looked at about thirty or forty companies before deciding on Bangor Punta?

A I don't know the number of companies, but we had a planning committee which had been quite active since the weekend of January 24th and January 25th, and there were quite a few companies that we had considered, and as to the exact number I can't say.

Q You said a planning committee. Who was on the planning committee?

A Well, we had our own manager of the planning department in Loch Haven, and to the best of my recollection ~~he~~ we had a representative from First Boston, one from Arthur Young and probably one from Chadbourne. At least, Arthur Young and First Boston.

Q And did you feel, Mr. Piper, that Chris-Craft pushed you into the Bangor Punta agreement?

A Yes. I think that's right. Let me put it another way: I don't think that if -- I'll say that if Chris-Craft had not made an effort to take over control of our company, I'm sure that we would not have been as active in the next two or three months in attempting to find a merger partner. On the other hand, we have discussed and considered merger in previous years from time to time. We have been approached on numerous occasions by other companies, and we never felt that the time was just right or that -- that it would be to the benefit of our stockholders to merge at this particular time.

However, as each year went by, we were getting closer and closer to the point where the company was going faster than we felt we were going to be able to acquire capital and possibly even management, so that the possibility of merger in the next year or two or three was certainly improving, and I think what this did more than anything

else was given us a push in that direction.

Q Do you remember at page 115 being asked the following question and giving the following answer, and I think this is consistent with what you have just said:

"Q Do you feel that Chris-Craft pushed you into the agreement with Bangor Punta?

"A They pushed us into action which we possibly would not otherwise have taken."

A Well, I think that basically is the same thing that I have just said.

BY MR. LIMAN:

Q Did you distribute the May 8th press release to your Piper dealers and distributors?

A I don't remember.

Q Did your Piper dealers and distributors, to your knowledge, own any stock of Piper?

A Yes, quite a few -- I would say that quite a few of the distributors owned stock.

How many of the dealers owned stock, I don't know.

Q If I show you 121 for identification, can you tell whether this is a letter you sent to your dealers and distributors enclosing the May 8th press release?

A As I say, I don't remember putting this out, but it is obviously one of our standard form letters to dealers and distributors, so I would have to say now yes.

Q When you say standard form...

A It was a release to the distributors.

Q And which you used to send them the May 8th press release?

A It is a cover letter to the May 8th -- it states there that I did.

Q And it has your signature?

A It states there that I did.

Q And --

A And it has my signature on it.

MR. LIMAN: I will offer that.

Q Did you, Mr. Piper, ask any of your shareholders to tender their shares to Bangor [illegible] ther than by letters?

A I don't specifically recall any instance, but I will say that we had quite a few telephone calls coming in to the company from various people inquiring about it.

As to whether I had any personally, I don't remember.

Q Was there a group set up with the company to handle these calls from shareholders during the period Bangor Punta and Chris-Craft had exchange offers outstanding?

A If we had one, it would have been our planning committee.

Now I don't recall thatwe had established any committee as such.

Q Was there a policy at the company at that time to recommend the Bangor Punta offer?

A I would have to say yes.

Q After Bangor Punta's exchange offer closed, you were aware that they did not quite have 50 per cent, and, in fact, they had only roughly 45 per cent of the stock of Piper?

A That is my understanding, somewheres in the mid-40's, that's right.

Q Was it also your understanding that if Bangor Punta's holdings rose to over 50 percent that you would receive additional consideration from Bangor Punta at that time?

I am talking about the end of July.

A Depending on what kind of a value would be placed on the Piper stock which the family had.

Q You knew that by the time that Bangor Punta exchange offer closed that the value of the family package was well below $80 a share?

A I imagine that we would have known that, yes, sir.

THE COURT: What do you say was the value, Mr. Liman?

MR. LIMAN: First Boston expressed an opinion --

THE COURT: No. What do you contend?

MR. LIMAN: My contention of what the value was

BY MR. LIMAN: 2124 A

Q Having seen these opinion letters of First Boston, does it refresh your recollection that you were aware at the time that the Bangor Punta exchange offer closed that there was a substantial differential between $80 and what the value of your package was?

A Yes.

In fact, First Boston gave us the advice it was $53.50, I believe.

2125 A

THE COURT: What was $53.50, the difference or the value?

THE WITNESS: No, that was the value of the package, of the entire package.

Q Did you undertake after the date that Bangor Punta's exchange offer closed to help them find people who might be willingto sell their shares?

A I don't recall that I did personally. We may have had -- as I say, the planning committee may have or some individuals in the plant may have and it is not beyond the realm of possibility that if a dealer or distributor or somebody called me and said "What do you suggest?" I might have said, "Sell it," but I don't recall --

Q You mean a dealer or distributor of Piper products, not a broker-dealer?

A No -- or a friend or something.

THE COURT: Is that $26.50 the subject of the lawsuit that is pending now?

MR. LIMAN: In Delaware?

THE WITNESS: That is part of it, yes, sir.

Q Are you, incidentally, in litigation with Bangor Punta?

2126A

A No.

Q Have you been paid your difference?

A No.

Q Do you know a man by the name of George Washburn?

A George Washburn, I believe was a former stockholder of Piper Aircraft.

Q Were you acquainted with him?

A Yes. Mr. Washburn, his wife and I think one or two daughters used to come to an annual meeting on occasion.

Q Did you, W. T. Piper, Jr., speak to Mr. Washburn about selling his shares?

A Not that I remember.

Q Do you know a Richard Piper?

A Yes. He is a nephew.

Q Did you or anybody of whom you are aware speak to him about selling his shares?

A It would be very possible because he is part of the family. I don't know that I talked to Richard directly, but it certainly is possible. I don't think so.

Q What about Ellsworth Buck?

2127A

A Ellsworth Buck, I believe, is a stockholder that lives out here on the Island that had had Piper stock since the early '40s. That is about all I remember about him. He had a substantial number of shares at one time. Who in our plant, if anybody, talked to him, I don't know.

Q Do you remember ever telling Bangor Punta that there were shares of Piper in friendly hands to the management?

A I don't remember saying that, but it would be logical to say that.

Q Would Mr. Ellsworth Buck be such a friend?

A I don't know that he had any particularly friendly feelings toward us except that he was an old stockholder of long standing and I assume that having been in that position he would certainly feel very frierdly toward Piper Aircraft.

Q Did you incidentally speak to First Boston at all about asking them to help Bangor Punta get the 50 per cent after Bangor Punta's exchange offer closed?

A Well, I don't know that I did, but I think that it's common knowledge that First Boston was working with Piper Aircraft and Bangor to put this package

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together and I assume that would be a part of its normal task.

Q Did you give them lists of people to call?

A I don't know that someone else in the organization did -- when you say me, do you mean me personally?

Q Yes.

A Not that I remember.

Q What I am asking is that here you have a difference of $27, or almost 12 or 13 million dollars for the family and what efforts, if any, did the family make after the Bangor Punta exchange offer closed to help them get that 50 per cent?

A That I don't know, but I think we have made it abundantly clear from the very beginning that the family was in favor of the Bangor Punta merger, or at least a combination, and I think even before the May 14 agreement we probably indicated our desire to do everything we could to make an association down the line with Bangor possible and contrary to any assistance with Chris-Craft because obviously that would be out of the picture.

MR. LIMAN: Read back the last line.

(Record read.)

Q What do you mean by that?

A I mean by that that we were not going to do anything to help Chris-Craft obtain stock. I think I made it abundantly clear as I have gone along that we were opposed to any association of the two companies.

Q I think you have.

Now, just a few more questions. I will show you this exhibit, the January 27, 1969 letter, which is part of finding 21. Do you see the paragraph there that says "The board of directors has carefully studied this offer"?

A No. 2?

Q Yes.

A Yes.

Q Is it afact, Mr. Piper, that evan before the board of directors carefully studied this offer you, William Piper, had decided to oppose it?

A I think any individual's immediate reaction to a takeover attempt by another company based on the raid type of operation is bound to be negative and opposed to it, but I think our immediate -- you said what was our immediate attutide toward it and I think it was one more of being a little upset about it and certainly

not feeling very kindly toward this outfit, but I don't know that we had elected or decided right there at that minute that we were going to oppose it. I think the purpose of our meeting with the Chris-Craft people the next day in New York was to see what they had to offer and what were their intentions, and of course we got nothing out of that conversation and if silence means anything, it was pretty obvious what they wanted was a takeover and they didn't seem to have anything worthwhile to offer us.

So, under the circumstances, until we had a chance to know a little more about this outfit, we were not going to immediately knuckle down and give into any kind of a takeover attempt of this type.

Q The Dow Jones on January 23, at 11:24 a.m. stated, "William T. Piper, Jr., president of Piper Aircraft Company said 'We have no interest at all in the tender offer for Piper stock being considered by Chris-Craft Industries."

Would you have said that if you had not reached the conclusion --

A You asked me that before --

Q Would you have made a statement like that? I

know you say you don't remember it, but would you have made a statement like that if you had not reached a conclusion?

A Yes, I think so. We are not interested in anything we know nothing about and until we find out something more about it and have a chance to talk to the proper counsel, we are certainly not going to show any interest in it.

Q And you had your board of directors meeting on the Saturday -- do you remember it -- January 25?

A Correct.

Q And is it a fact that on that same day you met with Grumman?

A I'm not sure whether it was the 25th or the 26th.

Q With Mr. Evans?

A I don't remember the -- I can't place the dates in any sequence, but I know it was right in that weekend area, but just exactly when, I don't know.

Q Well, it is a fact, isn't it, that before the board of directors of Piper even met, you had decided that Chris-Craft wasn't for you?

A We were certainly decided against it until we knew more about it. Up until this point we hadn't been able to learn anything about their intentions, and I think, as I brought out before, thatone of the main reasons for a six-months or a period of time for study with Grumman was to determine if a merger was going to be beneficial to either company, and I think this is the way you try to work out a merger. You don't wait until somebody sandbags you and say, "Yes, I think this is a good idea." You sit down and in a businesslike way you try to determine whether or not a merger is going to be in the best interests of both companies.

Q Did you see the Grumman press release before it went out?

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A I don't remember it, but I should think that I certainly must have seen it.

Q Were you aware -- if I show it to you, does that refresh your recollection?

MR. PENNOYER: Your Honor, objection. Refresh his recollection as to what?

MR. LIMAN: As to whether he saw it at the time.

THE COURT: What finding is that?

MR. ACKELL: 37.

A Yes. I recall at least discussing these various paragraphs. Whether I actually saw the release before it went out -- it went out of our New York office, I think.

Q Is it a fact that you also sent the release to your shareholders?

MR. LIMAN: It is Finding 38.

A Yes.

Q But in any event, were you aware that your press release did not say that the Grumman merger was conditional on an agreement between you?

A I think I said in that release that we had a six-month period of time to study the merger.

"The agreement is subject to approval by the various boards of directors, both of whom are scheduled to meet to consider the transaction."

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It says here that the purchase provides an opportunity for Grumman and Piper to study the feasibility and advantages of a possible combination. It doesn't say that there is definitely a combination.

Q Did you ever put out a release on the Grumman transaction in which you said that Grumman has the right to put the shares back in the event the combination does not go through?

MR. PENNOYER: Objection.

A I don't think that's necessary. Our counsel, legal counsel, and First Boston as financial counsel first drafted this type of material, and if they didn't think it was necessary, it's not up to me to say what's necessary and what isn't.

Q Do you remember, Mr. Piper, at page 93 of your Pennsylvania deposition, on April 16, 1969, being asked these questions about the letter I have just shown you on your January 27th letter:

"Q In the second paragraph there is a statement, 'Your board of directors has carefully studied this offer.' What study did the board of directors make of the option?

A We have copies of Chris-Craft's advertisements which appeared in the newspapers and had gone down over the offer. As far as I know, we had discussed the pertinent

parts of it.

"Q Were you finished?

"A Yes.

"Q So that the careful study that you referred to in your letter was a careful review of the terms of the offer itself?

"A Correct."

A I think there is a confusion here, because I was talking about the Grumman --

MR. PENNOYER: Your Honor, I think the deposition testimony is confused and meaningless in referring to the January 27th Chris-Craft letter. I think there is some confusion with Grumman.

THE WITNESS: We were just talking about the Grumman letter here a minute ago, and you started to quote now from our January 27th press release.

Q I should have read a little earlier:

"Q Did you see a copy of the letter before it was sent out, the letter,referring to the January 27th letter, and not the Grumman letter."

A The Grumman letter is now a thing of the past.

Q So is this. But referring to your January 27th letter:

"A I don't know that I saw a copy. I certainly was

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aware of the information in it and discussed the paragraphs.

"Q The letter is dated January 27th. Do you know in fact when it was mailed?

"A No, but I would say that some went out on the 27th and some went out on the 28th. Probably most of them on the 28th. I don't know.

"Q Were they mailed from New York?

"A Yes."

And then it contains the paragraph that I read to you before and which you can look at here. That begins, "In the second paragraph there is a statement."

A I think that we did carefully study it. I can't see any dispute with that. We have not only as officers but from our financial counsel and our legal counsel as well. In fact, most of the study and most of the snalysis of a release or of a tender offer would have to come from First Boston and from the legal people, because this is their language and not ours.

Q In fact, Mr. Piper, were you relying on First Boston to reach your conclusion as to whether $65 a share was a fair price for the stock?

A Are you talking about now, Chris-Craft or --

Q Chris-Craft.

A I don't know what "fair price" means.

MR. PENNOYER: Objection, your Honor. This is not --

THE COURT: The witness has answered. I think this whole field is very argumentative here.

THE WITNESS: I'm sorry. What is next?

THE COURT: You have answered it. Wait for another question.

Q Were you told before this letter went out by Mr. Miller of First Boston that he considered $65 a share to be a good price for a tendering shareholder to get for his Piper stock?

A I don't recall that Paul Miller or anyone else at First Boston ever said that $65 was a good price. The letter, as I recall it, has to do with a -- what's the wording in the letter, that they -- it doesn't -- it doesn't refer to a fair price or an adequate price. It's a --

Q It says, "The offer is inadequate."

A We felt the offer was inadequate, and I don't recall that in regard to an inadequate offer that anybody at First Boston ever referred to $65 particularly as being a good price or a medium price or any other price.

Q Didn't you ask them?

A I don't recall that I personally did, but I am sure that we discussed the price, and we have also discussed

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all the other offers in the letter or the clauses which Chris-Craft was going to make in its offer to the Piper shareholders.

Q Are you saying, Mr. Piper, that the statement in this letter that the board "is convinced that it is inadequate" -- "it" being theChris-Craft tender offer -- was not based on price?

A The price is only one portion of the whole offer. The offer has to do with an exchange of cash for Piper stock, and we felt the whole offer was inadequate, not only because the possibility of the price was low but it was not in the best interests of the stockholders.

Q Did you ever ask Chris-Craft at this meeting that you attended with Mr. Pool and Mr. Miller to increase the offer from 300,000 shares to more?

A No. I don't think the quantity of stock to be tendered came up.

Q If I show you testimony which is in evidence from Mr. Miller, at page 69 of his record, line 8 -- and I will ask you to read it to yourself, lines 8 to 15 -- would you tell me whether that refreshes your recollection as to whether Mr. Miller told you that $65 a share was a fair price?

THE COURT: Mr. Linar, you have been interchangeably

talking about price and then sometimes talking about offer. I think the testimony has dealt with price on one hand and offer on the other hand, and now you are asking the witness to go back over Mr. Miller's testimony, which had to do with price and not offer.

I think we have had enough of that. I understand exactly what the witness is contending, and I understand exactly what you are contending. Nothing is gained by just repeating this whole area.

MR. LIMAN: I am just asking --

THE COURT: He is saying that "offer" means one thing, and you say that "price" means something to you.

MR. LIMAN: I was just asking him whether this refreshes his recollection that he was told something about price. That is the only question, your Honor.

THE COURT: All right.

(To witness) Do you remember?

THE WITNESS: I don't remember Mr. Miller saying this. I know it is in his testimony, but I don't recall. I don't remember him saying that.

Q Now, Mr. Piper, how many shares of Piper Aircraft Corporation did you tender to Bangor Punta Corporation?

A Everything I owned, which was approximately 39,000 shares.

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Q And in reporting that transaction on your tax return, did you use the value that First Boston set forth in its letter to you?

MR. PENNOYER: Objection.

THE COURT: Sustained.

MR. LIMAN: I would put on the record what my next question would be, your Honor, in light of the ruling --

THE COURT: You can put all the questions you want. You are not estopped from putting questions.

Q Were you prepared, Mr. Piper, to rely on the First Boston letter of valuation to you in reporting this transaction on your tax returns?

MR. PENNOYER: Objection.

THE COURT: Same ruling.

MR. LIMAN: May I have one moment, your Honor, to check my papers?

No further questions, your Honor.

THE COURT: Any cross-examination?

MR. PENNOYER: No questions.

MR. RYAN: No questions.

MR. ARNING: No questions, your Honor.

THE COURT: No further questions.

You are excused.

(Witness excused.)

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MR. RYAN: We have Mr. Salgo available, your Honor.

THE COURT: Very well.

N I C H O L A S M. S A L G O, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

THE CLERK: What is your address?

THE WITNESS: 4 East 72nd Street, New York.

DIRECT EXAMINATION

BY MR. RYAN:

Q Mr. Salgo, will you please relate to your business experience to the present time?

A I started working in Hungary in 1933.

MR. LIMAN: I am sorry. Could you speak up, Mr. Salgo?

(Answer read.)

A (Continuing) In the food business, export sales. Moved to Switzerland in 1936, became partner of a wholesale distribution company. I came to the United States in 1948, had several business enterprises in which I was employed. The major was Webb & Knapp in 1949; Norbude Corporation from 1954 on; my own, Nicholas Salgo & Company, in 1959, and Punta Allegra, now Bangor Punta Corporation, from 1960 on.

Q And what is your present position with the Bangor

Punta Corporation?

A I am chairman of the board.

Q Now, Mr. Salgo, I am going to direct your attention to early May, 1969. During that period of time, did you have any conversations with any person or official affiliated with ISI Corporation?

A Yes; I did.

Q Do you recall approximately when you had such a meeting?

A In the early days of May, probably around the 4th or 5th of May, in San Francisco.

Q Was this one meeting or a series of meetings?

A I think I spent a day and a half in San Francisco, and I think we had at least two meetings.

Q Well, to the extent possible, could you please tell us the substance of the conversations you had at your first meeting and also the persons present, to the best of your recollection?

MR. KUSHNER: Objection, your Honor, on the grounds of relevancy.

THE COURT: Overruled.

A My main interlocutor there was Mr. George -- no, pardon me -- Robert Brown. Some of his associates joined us from time to time. I can recall the name of

Robert Morey,but I don't think I could recall any other names. Most of my time I spent with Mr. Brown. The main subject of my visit was a then outstanding agreement between ISI and a prospective seller of the company Bangor had a contractual agreement to purchase. This agreement provided for ISI to buy from the sellers a large amount of Bangor securities for investment, and the reason for my visit was to explain them the delays, the expectations of this transaction, to make sure that they stand by their agreement.

In the course of these discussions, which were interrupted with lunch and other matters, they asked me, and I gave them a rather detailed rundown of the corporate developments in the last six months, in effect, since our last annual meeting.

Q And do you recall, to the best of your recollection, the substance of these discussions that you had with Mr. Brown?

A It encompassed the review of our, what we call continuous and main operations, indication of our long-range plans with some other corporations which we were less enchanted with, and I also discussed with them, told them about the offand-on discussions we had in connection with Piper.

Q By the way, do you know what position Mr. Brown had with ISI Corporation?

A I wouldn't recall the title, but it was equivalent to general manager.

Q Now, could you continue on with what you told Mr. Brown concerning Piper Aircraft Corporation?

A Essentially, I think I asked more questions than I made statements. Mr. Brown is a very versed man in investment and in many industries and corporations through his investment practices, and I ~~questioned~~ asked his opinion about generally the aviation business, Piper's particular position in the industry, and, of course, I indicated to him the reason of our interest and the fact that there are discussions going on with the Piper family and the Piper Corporation.

Q And could you describe for us what you told him concerning these discussions going on at that time?

A I mentioned to him that these discussions were kind of in a peculiar way initiated way back but never came to fruition, that late in April there were again some, but at that time it looked to me that we are far away from any immediate conclusion, one way or another.

Q Did you discuss with him anything further, to your recollection, concerning Piper?

A I wish you could be more specific, because, frankly, I don't recall every detail.

Q Did you have any conversations with Mr. Smith at which Mr. Morey was present?

A Mr. Smith?

Q Excuse me. Mr. Brown.

A Oh, I'm sorry. Mr. Brown. -- at which Mr. Morey was present? Yes. Mr. Morey was called in. He seemed to be the person more versed in the question of how the market would react, how many shares we could acquire or not acquire, under what conditions.

Q And when you were talking with Mr. Morey, were you discussing making a tender offer for Piper shares?

MR. LIMAN: Objection to the leading.

THE COURT: Yes. Sustained.

(To witness) What was the subject matter of the discussions with Mr. Morey?

THE WITNESS: It was really with Mr. Brown, your Honor. Mr. Morey was called in by Mr. Brown more or less as specialist, to help him formulate his own ideas or his own answers, and --- what I tried to come to, to get a feel, what were our chances to gain a substantial number of Piper shares if we do one way, if we do another way, whether we come with a cash tender, whether we come with a securities

tender. Are we -- do we have any chances at that point of the game, where Chris-Craft itself had a very substantial position?

Q Do you recall anything further that you discussed with Mr. Brown at that time concerning Piper?

A The thing remaining in my mind is that it was their opinion that only a firm position of Bangor would have any chance to be successful, and that pretty well confirmed our maybe instinctive or logical stand which we had 'way back, that unless we have a firm agreement with the Piper family we shouldn't get involved.

Q Do you recall anything further?

A No. Not anything specific.

MR. RYAN: Your Honor, I have no further questions of Mr. Salgo. The balance of his testimony would be cumulative. Mr. Flick and Mr. Wallace testified concerning matters which are relevant both as far as Chris-Craft is concerned and the SEC, and I have no objection to cross-examination in any area.

THE COURT: Does anybody want to cross-examine Mr. Salgo?

MR. KUSHNER: Your Honor, may I have a few moments, please, to consider that matter?

THE COURT: Why don't you tithink about

that while Mr. Liman goes ahead?

CROSS EXAMINATION

BY MR. LIMAN:

Q Mr. Salgo, you recall that I examined you at a deposition on January 5, 1970; is that correct?

A I assume your date is correct. I remember the examination.

Q I will show it to you.

THE COURT: Do you have a copy?

Go ahead, Mr. Liman.

Q (Continuing) Mr. Salso, I don't recall whether Mr. Ryan brought it out, but you are a lawyer, admitted to the Bar in Hungary?

A I was never admitted to the Bar.

Q But you --

A I studied law, and I got a degree; correct.

Q And you have followed the proceedings in this case, the motion for preliminary injunction, the appeal to the Court of Apppals; am I correct?

A Yes, in my own way I did.

THE COURT: Does Hungarian practice follow the English common law?

THE WITNESS: No. It is more related to the German.

THE COURT: To the German?

THE WITNESS: Yes.

Q And, Mr. Salgo, you were aware on January 5, 1970, when I examined you, that one of the issues in this lawsuit involved the purchase by Bangor Punta of Piper stock from Bay Securities; is that correct?

A Yes. I assume yes.

Q And do you recall being asked these questions and giving these answers, at page 135:

"Q Do you know any of the principals at Bay Securities Company?

"A No. I met one of their executives. I may have met some others since.

"Q Who are the executives you have met?

"A Robert Morey, I think.

"Q Have you met him before the purchase of the block of stock by Bangor Punta?

"A I may have met him before.

"Q Did you have any discussions with Bay Securities?

"A Not with Bay Securities.

"Q With Morey?

"A I may hae, but I can't recall any specific discussion at the present time."

Do you remember giving those answers?

A You recall them, so it must be correct.

Q And at that time was it true that you didn't have any specific recollection of your conversations with Mr. Morey?

A That -- pardon me. You were talking about -- all your questions were about Bay Securities; correct?

Q Right.

THE COURT: That is what he is talking about now, too. There hasn't been any ch ge in that.

THE WITNESS: I was lking about ISI.

THE COURT: Yes. Y were talking about something else. Mr. Liman has not indicated that he is talking to you about anything beyond Bay Securities.

THE WITNESS: Right.

Q Wasn't Mr. Morey from Bay Securities?

A I understand today that there is a difference between ISI and Bay Securities, and I may have heard that, but frankly I never had-o do any business with Bay Securities, so for me Bay Securities was a pretty unknown entity until this information developed.

Q Mr. Salgo, on the examination of Mr. Ryan, you testified that in the course of speaking to Mr. Brown of ISI Mr. Morey came in; am I correct?

A Correct.

Q And is that the same Mr. Morey whom you identified

at page 135 of your deposition, which I have just read to you?

A I'm pretty sure he is the same.

Q And was it true, then, that on January 5, 1970, you had no recollection of a specific discussion with Mr. Morey?

A It is true.

Q So that you have refreshed your recollection since that time?

A Yes.

Q And have you had occasion to read the testimony of Mr. Morey which was given after January 5, 1970?

A No.

Q Were you told about it?

A Frankly I don't recollect. I may have been, but I don't think so.

Q Did somebody tell you that Mr. Morey had testified at his deposition that you told him that you were interested in Piper and that he then began buying Piper stock?

MR. RYAN: Objection, your Honor. That is not the testimony.

THE COURT: I will allow the question on the representation of counsel that he is fairly stating what this testimony is.

If it isn't so, you can move to strike that out.

MR. LIMAN: I would rather show him what Mr. Morey's testimony is in the book, your Honor.

Q I show you finding 88 and I will ask you to read it and then I will ask you to look at 89.

(Pause)

A Yes, sir.

Q Were you shown those findings before, Mr. Salgo?

A No, sir.

Q This is not what refreshed your recollection?

A No.

Q You testified that in meeting with Mr. Brown you reviewed your operations, your long-range plans, and so on.

Do you remember what you said about your long-range plans?

A I have no direct, vivid recollection, so I would be reconstituting whatever I am telling you now, so --

Q It would not be actual recollection?

A It would be not a recollection of what I at that time told --

Q Is the testimony you gave concerning Piper reconstruction or actual recollection?

A It is actual recollection because it followed a certain pattern which was at that time my objective of my visit.

Q I don't understand what you mean when you say

it followed a certain pattern.

A I went for a certain purpose, and the purpose indicated I had to cover certain subjects, so I remembered my subjects but I can't, two years later, recall you exactly the details on each subject.

If you want to be more specific, I think you will refresh my memory and I can answer you.

Q I wasn't there, Mr. Salgo --

THE COURT: Please. Next question.

Q You said, Mr. Salgo, in discussing these long-range plans with Mr. Brown that you discussed, I think you said, "Corporations which we were less than enchanted with"?

A Operations.

Q "Operations we were less than enchanted with"?

A Yes.

Q Do you recall which operations you mentioned as being less than enchanted with?

A Yes. We were less than enchanted with our whole textile group for a while, and particularly at this point, and I explained our position and as a consequence of this, later on, several months later, they expressed interest to help us to spin it off or separate from us.

Q Were there any other operations which you were less than enchanted with which you discussed with Mr. Morey?

A I have no recollection, but probably we did discuss the railroad, but that would be a reconstruction because that was another operation which at that time it was on our mind that we have to think about it.

Q At the time that you spoke to Mr. Morey were you aware there were various drafts of agreements with the Piper family in existence?

A I can't even tell you now whether I knew -- or whether now I knew that on May 4th there was a draft of agreement or not.

Q Were you keeping in communication with your office in New York on the progress of the negotiations with the Pipers?

A Yes, on the discussions, definitely yes, and the negotiations, but I cannot recall whether at that time there were draft,and if there were draft, whether I knew about them.

Q Had you been told at this time that as part of an agreement with the Pipers you would make an offer to the public of securities to be valued at $80?

A Mr. Liman, I cannot put an exact dateline on

it. When we dropped the option for purchase plus tender position, it was around this period, but I am in no position to assert you by date.

Q Had you been giving any instructions to the office in New York with respect to this negotiation?

A Whether I have been giving instructions?

Q Yes.

A What kind of instructions?

Q Were you telling the office how they should negotiate this -- Mr. Wallace, Mr. Flick?

A I can't answer either yes or no because that isn't the way we operate.

Q How do you operate?

A We discuss matters and after listening to each other's argument, decide the next step and when new information, new input come, if we feel, or whoever does the active role feels that he has to keep the other informed and ask questions, then we again discuss.

Q Had you told Mr. Wallace that you did not want to give the Pipers the $80 package unless you got control? Had you discussed that with Mr. Wallace while you were out of town?

A I am positive that we discussed that.

Q Did you discuss with him that the main reason for

requiring over 50 per cent before you gave the Pipers this package was to assure absolute cooperation on their side "in our efforts"?

A Yes, that's correct.

Q Is this in fact what happened? I will read you from page 113 of your deposition:

"Q Mr. Salgo, did you discuss with Mr. Wallace or anyone else at Bangor Punta why you were not willing to give the Piper family the $80 package if you did not obtain control of Piper?

"A The main reason was to assure absolute co-operation on their side in our efforts, so we had to keep more or less a bonus above their notes."

A That is perfectly correct.

MR. LIMAN: There is one more question I wanted to ask the witness, your Honor, and I can't find it in my notes.

If Mr. Kushner, your Honor, is ready to go on, perhaps he could proceed and then I will put these one or two last questions to him, your Honor.

MR. KUSHNER: I will proceed, your Honor.

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CROSS-EXAMINATION

BY MR. KUSHNER:

Q Mr. Salgo, did you have any personal objection against Mr. Dumaine purchasing the Bangor and Aroostook Railroad?

A None whatever.

Q For the sake of convenience, I will refer to that company as the railroad from now on, so you will understand.

Do you recall attending a directors meeting of Bangor Punta Corporation on September 9, 1969?

A Yes.

Q Do you recall that at that meeting the directors authorized the sale of either the assets or the stock of the railroad for $5 million?

A I do.

Q Did you argue at that meeting that the assets of the railroad and not its stock should be sold?

A Yes.

Q And you were unsuccessful in your argument?

A I would not say so.

Q Did the board authorize the resolution?

A If I would have been unsuccessful then the

board would have authorized the sale of the stock, period.

Q You were satisfied in the resolution as it was passed, in other words?

A I wasn't satisfied but that is the best I could get.

Q Is it correct that you urged a sale of the assets on the board at the September 9 meeting because of tax benefits you believed Bangor Punta could obtain from a sale of assets as opposed to a sale of stock?

A I urged a complete evaluation of every possible methodology, not only sale of assets, but since there seemed to be tremendous pressure put up by Mr. Hutchins to get through a resolution giving him a free hand -- authorization, not free hand, I am sorry -- authorization to act, I had to settle for the second best, which at that time in my opinion was the sale of assets.

Q By that time you are referring to September 9, 1969?

A Correct.

Q What was the first best, in your opinion, at that time, namely, September 9, 1969?

A Any other method not involving the sale either of the assets or the stock, but a spinoff, a writeoff

everybody is in agreement on the point that a new holding company should be formed to which we would contribute the railroad shares and some or more of these holding company shares would be considered for any type of distribution."

You will see the memorandum is dated April 24, 1969.

A Correct.

Q What indication did you have as of April 24, 1969 that everyone was in agreement with this idea?

A The previous board meeting seemingly received my ideas and my suggestions with great enthusiasm and that is why I appointed Mr. Hutchins, on my suggestion, and two other gentlemen for a committee to investigate this idea.

Q Isn't it correct that the Hutchins committee was charged with the responsibility of studying other proposals --

A No, sir.

Q -- besides your own?

A No, sir, not on May 21 -- pardon me -- on the proposal for the distribution of the railroad to the shareholders.

Q When the Hutchins committee was appointed on April 1 its responsibility was limited to studying plans for distribution of the railroad?

A You are putting in a negative which I can't agree to. It was not limited, but that was the aim. There was no express limitation on it, but that was the aim and that was the only then known aim, and I think I pretty well confirmed it in this sentence which you just read.

Q Do you recall being examined in the course of the commissions's investigation on June 25, 1970?

A I do.

Q Referring to page 30, starting with line 9, do you recall giving this testimony --

MR. KUSHNER: Does your Honor want a copy of this?

THE COURT: Go ahead.

MR. LIMAN: Your Honor, we will give you our copy.

THE COURT: Go ahead, Mr. Kushner.

BY MR. KUSHNER:

"Q You indicated that the committee was formed to look into the railroad matter. What was the

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Q Mr. Salgo, let me read to you some more of your testimony and ask if you recall giving it, referring to page 31:

"Q Was there a point of time at which the spinning off of the railroad was discarded?

"A Yes. On October 2nd, when they signed the agreement itself.

"Q I am speaking of the idea's being discarded by the other people on the board and not necessarily by yourselves.

"A I was in the minority on the committee in early September, and to my best recollection that was the first and last time I put in my material or my vote.

"Q You mean a minority of one?

"A I was in the minority when I knew that it was useless for me to continue to argue. Whether it was a minority of one or nine, I can't tell you, because I didn't ask for a voice vote.

"Q Have you felt that the consensus had been for this idea also?

"A Let me say that a vast majority had been against my idea.

"Q Do you recall anybody on your side besides yourself?

"A I think there were a few that were vacillating, but it was evident that I would create more problems than achieve results by my continuing to fight, so I tried to concentrate from there on on minimum conditions to blunt, so to speak, the impact."

Do you recall giving that testimony?

A I do.

Q And it was accurate then and accurate now?

A Accurate then and accurate now.

Q Do you recall also that the Hutchins committee brushed aside your idea of recreating the railroad into a public holding company almost at the outset?

A I would say that they more than brushed it aside. They never reported on it. To my best knowledge they never even considered it.

Q Now returning to the meeting of September 9, 1969 --

A December 9, 1969?

Q Yes, sir. We started with your testimony --

THE COURT: The witness thinks you said December. You said September.

Q September.

A I am sorry. I misunderstood.

Q At that time is it correct that you believed

there were substantial tax benefits to be achieved by a sale of the assets of the railroad as opposed to a sale of its stock?

MR. RYAN: Your Honor, that question has been asked and answered.

THE COURT: All right. He can answer it again.

MR. KUSHNER: I don't recall that it has been, your Honor.

MR. RYAN: It was the very first question he asked.

THE COURT: I think so but let him answer it again. Maybe we will get the same answer.

A Mr. Kushner, I so believed, for the last ten years.

Q And is it also correct that as of September 9, 1969, this belief of yours had not been verified by any studies yet made?

A It was not verified to everybody's satisfaction, but all the studies made were tending to get nearer and nearer to full verification.

Q And when were these studies made?

A They were started as early as 1959. They were taken up again in 1964. They were on my request reinstated in June, 1969, and in September, 1969, finally

they were more or less completed.

Q Mr. Salgo, I show you Exhibit 63, which is a copy of a memorandum dated September 4, 1969, from Mr. Reames to you, and I ask you if you recall reading that memorandum sometime prior to September 9, 1969.

A I am definitely recalling having read this.

MR. KUSHNER: Does your Honor wish to see a copy of this?

THE COURT: No.

(Recess taken during which another matter was heard.)

BY MR. KUSHNER:

Q Mr. Salgo, have you had a chance to read Exhibit 63?

A No. I didn't go into detail. Do you want me to read it all through?

Q No. Do you recall whether you read this memorandum dated September 4, 1969?

A I am sure I did.

Q Prior to September 9, 1969?

A Yes, sir.

Q Now referring to the second page of Exhibit 63, the memorandum states:

Under "Proposal to Sell Assets," it says:

"Since we are unable to determine the basis of the right of way, it is not possible to estimate the amount of gain or loss to be realized on the sale of all the assets. We do know, however, that we would realize approximately 4.2 million dollars gain on the sale of the rolling stock and recapture approximately 1.2 million dollars in investment tax credit."

Do you recall whether this state of knowledge changed prior to the board of directors meeting of September 9, 1969?

A Would you repeat the question?

THE COURT: He wants to know whether the information to the boardof directors changed by September 9, 1969.

THE WITNESS: I don't think that it did, Mr. Kushner.

Q Can you tell the Court the reasons that the board acted on September 9th without awaiting the results of the tax studies that were being conducted about the railroad assets?

A I must admit the board faced a difficult decision,

because this memorandum and any other written by a conscientious person recited the easily known figures and put in zero for the figures whichwere difficult, complicated and long-range to unearth, because we had to go back to 1913.

I, from previous investigations, but which could notbe laid black on white as easily as you could determine the present rolling stock over depreciation or at present the last few years' investment credit -- I personally and most of my associates were convinced that we are looking at something in the neighborhood of easily between $20 million to $35 million loss, but it needed time to be able to put it as exactly and as absolutely on a piece of paper.

Mr. Hutchins put up a tremendous -- excuse the expression -- effort to railroad to through, saying, "We don't know anything really about the pasthistory. We know the present figures and we have an offer. It's cash. All other ideas are financial ideas. We know Mr. Dumaine has the money. I am perfectly satisfied that he will close if we agree to close."

I had a very difficult time to sustain my point of view. It was too late to try still to come back to spinoff idea, because at that time you realize we are now

in September.

We are in Piper. We have Chris-Craft as a minority owner, and we know that we have to raise cash if we want to complete our acquisition.

You may also recall I mentioned that in the absence of a willing third party, the spinoff was unquestionably the only thing to do.

Mr. Hutchins proved that the absence of a third party is not any more true, so the best I could do at that time was to promise my board that I will do now everything to get a real study finished up, get the figures together and ask that any sales resolution, if they want to sell it, which they evidently were -- I could see that from the questions and from the remarks -- should contain an alternative, and if the alternatives are as I expedted, that we should do everything possible to sell assets and not stock.

Q Mr. Salgo, who requested that the railroad be placed on the board agenda for the meeting of September 9th?

A I really wouldn't recall it.

Q How does an item as of this period of 1969 get placed on the agenda of the board of directors?

A Well, by normally by management, but sometimes

by committee chairmen come to the secretary and suggest that their report or their agenda should be placed on it.

Q And if it is a committee chairman coming, does management have to agree before the item is placed on the agenda?

A No. He is entitled to it.

Q Pardon, sir?

A He is entitled to it.

Q Oh, he is entitled to it?

A Sure.

Q And do you recall, by the way, that this meeting of September 9, 1969, was originally scheduled as a meeting of the executive committee and that the large turnout of directors turned the meeting into a directors meeting?

A I didn't recall it, Mr. Kushner, but now that you say it I think you are right.

Q Let me show you Exhibit 61 and ask you if that refreshes your recollection.

A Yes. It is probably correct.

Q Do you know what was responsible for the large turnout of directors?

A I would be guessing.

Q You didn't ask any directors to come to that meeting, did you?

A No. We never ask. We have a very simple methodology: All our directors are invited to all meetings, both board and executive committee.

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Q Fine. And you testified it was resumed in June?

A I reinstated it in June and then personally undertake it that it shall be done in September.

Q Did you personally reinstate it in June?

A Yes. I started it and I assumed that it will be done.

Q By telling Mr. Flick in June to be sure that it would be done?

A I would say in June it was more Mr. Hutchins bailiwick, because he was at that point the person most occupied with the railroad's future.

Q In June the Hutchins committee was in charge of the railroad matter?

A The Hutchins committee or, let's put it this way: At least Mr. Hutchins personally was very much interested to pursue the matter.

Q May I have that last part again?

A To pursue the matter.

Q Do you recall whether you did tell Mr. Flick in June 1969 to be sure that these tax studies were promptly pursued?

A If I did not do it directly, then I am sure I asked Mr. Wallace that it should be done as

promptly as possible. I was aware at that time that we had some other things going on.

Q Did you ever tell Mr. Flick that he need not devote the time of the staff to these studies because the railroad would never be sold?

A I don't recall these words, but that would astonish me that I use these words.

Q But you might have said the substance without the words?

A No. I may have told him first things come first and I want to have ultimately the studies but he has to take care of the pressing business.

Q Is it correct, then, that you changed your mind in September and at that point you wanted the studies promptly pursued or did I not --

A I didn't change my mind except some other people changed their minds which obliged me to change my methodolgy.

Q Mr. Salgo, I have heard the term methodolgy a few times during your testimony. Why don't you explain the term so the record will be clear.

THE COURT: Well, you changed gears ~~ideas,~~ didn't you?

desire expressed on the board to dispose of the railroad.

"Q In one way or another?

"A One way or another and within reason."

Do you recall that testimony?

A Yes.

Q It was accurate when given and accurate now?

A It is accurate.

Q Do you also recall that you addressed a meeting of the Bangor Punta directors on August 7, 1969 on the subject of the railroad? Let me show you Exhibit 47 for identification and refer you to page 12 and ask you if thet refreshes your memory.

A Yes, I recall that. It is paragraph 4 on page 12.

Q Do you recall what youtold the directors at that meeting?

A Yes, that in view of the overall policy to turn more and more towards major equipment; recreation equipment, we should limit our other activities and realize both managerial power and cash by withdrawing from some activities which do not have the same long-range potential and desirability, and this paragraph, it seems to me, is a condensation of this statement.

Q Of those remarks of yours. The remarks in the minutes referring to achieving real hard values for the assets you are going to dispose of include the railroad, did they not?

A Yes.

Q Were those words, real hard values, your words?

A I guess it is, yes. I may not have used exactly the same words, but they probably are a correct interpretation of it.

Q And those words, as you used them, meant cash?

A It may have meant cash or, for instance, transfer of a liability of ours with the company we are transferring. That is also hard value for the corporation.

Q Let me read your prior testimony, page 78, starting at line 8:

"Q Could you tell us what is meant there where it says "The corporation should achieve real value for these companies"?

"A Hard value in the business language means cash."

A That's correct.

Q Let me go down a few questions, at the bottom of the page, starting with line 20:

"Q I am trying to determine whether you are speaking in terms of a merger or sale when speaking of a real hard value for these companies.

"A No, it is meant in the sense of disposition through sales for value, not in the corporate unifications or otherwise."

Do you recall that testimony?

A Yes, I do.

Q And it is accurate?

A It is accurate.

Q At that meeting of August 7 did you tell the board how much cash you thought the railroad should be disposed of for?

A No, I don't think we went into it at all, because at that point, August 7, I was still convinced that the ideal way of disposing of the railroad was to transfer some of our liabilities there, which are cash, as far as my cash needs are concerned, and spin it out and dividend it out.

Q Transferring the liabilities of the railroad to the new holding company was equivalent to cash?

identification in evidence.

MR. RYAN: I have no objection to either.

THE COURT: Received.

(Plaintiff's Exhibits 124 and 125 for identification received in evidence.)

Q Mr. Salgo, Exhibit 125, Mr. Hutchins' reply to you of April 14, 1969, states in part:

"I am glad to accept your suggestion that I chair a committee of the board in connection with the relationship of Bangor Punta to its railroad subsidiary -- to come up with recommendations for aplan of action. I am particularly pleased to work with my co-committee members, Messrs. Siel and Stone."

Did you have occasion to communicate with Mr. Hutchins after receiving this memorandum of April 14th from him to discuss his concept of the function of his committee?

A No; I don't recall, and I read it here that I am quite fully scheduled until the week of April 28th, and I say -- at which time he will convene his committee

Q Do you recall whether prior to the appointment of the Hutchins Committee any other committee had been appointed by the board of directors of Bangor Punta to study the disposition of the railroad?

A I can't recollect any such committee.

Q Do you recall whether prior to the offer of $5,000,000 by Dumaine there had been any other offer of $5,000,000 or more in cash for the railroad?

A I don't recollect a $5,000,000 or more cash offer, no.

Q Is it correct that since early April, 1969, you personally were not involved with the problems of studying the disposition of the railroad?

A I wouldn't say that so directly. I continued to be preoccupied by that problem, but I was hoping that the ideas expounded to the board on the April meeting and translated to Mr. Hutchins and his committee will bear some fruit and some concrete recommendations.

Q If there were some people interested in the railroad, would it have been the function of the Hutchins Committee to negotiate with them?

A It could have been.

Q Do you recall, upon the appointment of the Hutchins Committee, giving that committee the lead of a man named Coward, turning it over to the committee?

A I don't recall exactly when, but I recall having referred Mr. Coward later on to Mr. Hutchins.

Q Let me read you your prior testimony on this point, page 58, a question by Mr. Von ~~Styne~~ Stein:

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in Exhibit 21, at page 35, and ask you if that refreshes your memory in any way:

"Q When did you become aware that Mr. Wieler was consulted?

"A At a meeting in New York at the Bangor Punta offices on June 3rd, a discussion was had with the top management of Bangor Punta. Mr. Wallace, Mr. Robertson and myself, possibly Mr. Flick and Mr. Salgo talked with Mr. Wieler.

"Q Was he at the meeting, too?

"A No, on the phone, on a conference call, and I heard Mr. Wieler's comments to the general effect as expressed in the exhibit.

"Q What was the purpose of this meeting?

"A On what date did you say?

"Q On June 3rd.

"A I think the purpose of the meeting was to discuss the effect on Bangor Punta of the sale of the railroad for $5,000,000 in cash."

Does that help refresh your recollection?

A Just about that is what I can recollect.

THE COURT: We will take a recess now until 10 o'clock, and I suggest overnight, Mr. Kushner, that you try and organize your material in such a way that you sharpen it

THE COURT: Just read --

MR. KUSHNER: It is the paragraph which starts: "Mr. Hutchins next considered the question of selling the railroad and to whom it might be sold".

THE COURT: Yes. Is that the paragraph?

THE WITNESS: Yes, it is, your Honor. "Mr. Salgo asked whether it would be advisable to offer to Mr. Dumaine 51 per cent of the stock of the railroad at book value" --

Frankly, I don't really understand it myself, what that means here.

Q Let me --

A I'm afraid that is a typing error or something. It just doesn't make sense.

Q Let me read you your previous testimony in a deposition by Chris-Craft and ask you if that testimony helps you in any way in this regard.

A Yes.

Q It starts on page 160. This is the Chris-Craft deposition of January 5, 1970, line 20:

"Q So that at the time that First Boston had last looked at the railroad, they had come up with a figure that justified the book value?

"A The carrying value. That is not really of book.

I have to ask you to understand, our book is 'way below that.

"Q How did you get to the carrying value?

"A Excuse me. I will explain. There are two books, one much higher. That is a railroad book through consolidation to us, something like $36,000,000, and the other book, which is our chosen book, so to speak, 'way back in '59, was 60 in one of the doldrum periods of the railroad, when we took it at the then market value.

"Q Of 18,000,000?

"A No. Six million."

And the answer continues, but up to this point are you helped?

A I frankly can't answer you, because I didn't write these minutes, but the only logical resemblance would be probably this book that you are referring to. In other words, book chosen in 1960, the then market value of the railroad stock.

Q Which was six million?

A Yes.

Q Do you recall Mr. Hutchins telling the May 21st meeting of the Bangor Punta board that Mr. Dumaine was the only logical purchaser for the railroad?

A Yes; I do.

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Q Do you recall on your deposition, at pages 177 to 178 giving these answers to my questions:

"Q At the conclusion of the exchange offer you had not attained your 50 per cent, am I correct?

"A That is correct.

"Q Why was it that you shut off the exchange offer at that point?

"A You want to know?

"Q Yes, sir.

"A Because I was scared stiff that they would hit it.

"Q When you say they, you mean Chris-Craft?

"A Yes.

"Q Is it also fair to say that you understood that Chris-Craft didn't have the six months -- when you say 'hit it', you mean they would accept it?

"A Yes.

"Q And you understood that Chris-Craft didn't have the six months on its stock at the time you shut off?

"A We weren't sure about it because we really didn't know exactly how they stand on it.

"Q But you knew that some of the stock at least

was not within the six-month period?

"A Yes."

Do you remember giving those answers?

A Yes.

Q And that was the truth?

A Yes, sir.

MR. LIMAN: No further questions.

MR. RYAN: I have no redirect, your Honor.

THE COURT: Any other questions by any counsel?

MR. PENNOYER: No questions.

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THE COURT: Received.

xx (Defendant Exhibit AQ for identification received in evidence.)

CLIFFORD L. FITZGERALD, JR., called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

THE CLERK: What is your address?

THE WITNESS: 60 Broad Street, New York City.

DIRECT EXAMINATION

BY MR. RYAN:

Q Mr. Fitzgerald, by whom are you employed?

A Drexel Firestone, Inc.

Q And in what capacity?

A I am a senior vice-president and head of the Corporate Finance Department, chairman of the Corporate Commitment Committee and a member of the executive committee of that firm.

Q Mr. Fitzgerald, will you please relate to us your education, from college?

A Yes. I attended Dartmouth College in the years 1948 to 1952. I entered the Air Force as an aviation cadet in 1952, becoming ultimately a first lieutenant and jet interceptor pilot, and upon leaving the Air Force in 1956 I entered Harvard Business School in 1956, graduating

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with with distinction in 1958.

Q And would you now relate to us your employment background since leaving Harvard Business School?

A Yes. I was a course assistant at Harvard Business School for a year, doing research in the Small Business Investment Company Act of 1958. I joined White, Weld in their corporate finance department in 1959, and in that capacity in the years between 1959 to 1964, among other things I worked on the Beech account as the No. 2 man on the account and the No. 2 man on the --

Q When you say the Beech account, what company are you referring to?

A I'm talking about Beech Aircraft. And also NARCO Scientific Industries, a principal supplier of Avionic Equipment to general aviation purchasers.

Now, in 1964 I joined Harriman Ripley, a predecessor firm of Drexel, Harriman, Ripley, which became Drexel, Firestone on January 30, 1971, and in that capacity as a vice-president I worked on financings that included the sum total of some $410,000,000 for the Boeing Company in 1966 as a co-manager, and also two financings involving United Aircraft, which occurred in 1966 and '67, totalling about $250,000,000, and also worked on financial matters relating to United Aircraft of Canada, Ltd., the manufacturer of the PT-6 turbo-prop engine.

Q Now, Mr. Fitzgerald, in relationship to the duties you performed concerning Beech Aircraft, would you describe what your functions were?

A Yes. They were primarily merger and acquisition efforts undertaken on their part, none of which were consummated. It involved a thorough analysis of Beech as a company, together with other prospective companies that they might acquire. This was principally in connection with the light observation helicopter competition that was sponsored by the Army and in which Beech intended to compete.

We also examined with the company as a prelude to any possible financing their plans for the King Air, prior to the formal approval of that program.

Q Now, would you go on, Mr. Fitzgerald?

A I think that describes the activities with respect to Beech.

Q Yes. Did there come a time when you left White, Weld?

A Yes; I did. I think I have covered that. To give you the chronology, it was in 1964 when I joined Harriman Ripley. We became Drexel, Harriman, Ripley --

MR. LIMAN: Objection. I think this is repetitive. It is on the record.

2185 A

THE WITNESS: All right.

Q What were your positions in the Drexel firm from the time you started until the present day?

A I became a vice-president of Harriman Ripley in 1965, a vice-president and director of Drexel, Harriman, Ripley in 1966 and a senior vice-president and member of the executive committee, chairman of the Corporate Commitment Committee of Drexel, Harriman, Ripley in 1970.

Q Andwhat types of work have you performed at your firm?

A Work entailing public-managed underwritings, private placements, merger and acquisition work, evaluation of estate -- estate valuations and valuations of investments for the firm's account and evaluations of participations in managed underwritings.

Q And when you say "valuations," you mean valuations of companies?

A Yes.

Q That is what you meant by that term?

A That's correct.

Q And could you describe briefly what your present position is as chairman of the Corporate Commitment Committee?

A The Corporate Commitment Committee approves all

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the participations as a major underwriter, entered into by the firm. It meets in that capacity weekly. In addition, it approves all of the commitments as a managing underwriter for any use of the firm's name with respect to merger and acquisition work, private placements or otherwise, including special studies.

In the latter capacity, the Commitment Committee requires the concurrence of the president of the firm.

Q And during the course of this work, do you value companies?

A Yes; I do.

Q Do you or does your firm have any relationship now or in the past with the Bangor Punta Corporation?

A Not other than as a participant in any syndicates.

Q And when you say "syndicates," you mean underwriting syndicates?

A Yes.

Q What about Piper Aircraft Corporation?

A Only in the same capacity.

Q And do you have any relationships with First Boston Corporation?

A As a competitor and as a participant in their syndicates.

MR. RYAN: Do you have any questions as to Mr.

Fitzgerald's qualifications? I believe he has been qualified.

MR. LIMAN: No objection.

MR. RYAN: Mr. Fitzgerald is not going to testify concerning the Bangor and Aroostook Railroad. There is a second gentleman. So I think as far as Mr. Kushner is concerned, it is not necessary for him to express himself.

Q Now, Mr. Fitzgerald, in your opinion what would have been the market price of shares of common stock of Piper Aircraft Corporation on May 7, 1969, in the absence of efforts by anyone to obtain a majority of the outstanding shares of common stock of Piper Aircraft Corporation?

A We believe the price would be approximately $55 per share.

Q Could you tell us how you arrived at that price?

A Yes. We examined the trading in Piper common stock in a period prior to purchases with a view to obtaining control, and we compared the prices of Piper during that period to that of the Standard & Poor's 425-Industrial Index, as well as the Cessna prices.

In the case of the Standard & Poor's and Cessna and Piper, we were comparing the price-earnings ratios for each relative to the other during the period that we thought was representative. That was a 13-week period. We again

compared the ratios that represented the average of Piper's price-earnings ratio to the Standard & Poor's price-earnings ratio and the average of Piper's price-earnings ratio to the Cessna price-earnings ratio to see whether disproportionate weighting should be given to one or the other, concluding that they should be weighted evenly, because the scatter of the data about the average was very small in each case and approximately equal.

The price-earnings ratio derived was 23.3662, and that was applied to the latest 12-months' earnings then reported for Piper of $2.36, producing a value, derived value of $55.14, which we have rounded to approximately 55.

Q Mr. Fitzgerald, in your opinion, what was the value of shares of common stock of Piper Aircraft Corporation on or about September 5, 1969?

A Approximately $42.10.

Q In your opinion, what was the value of the shares of common stock of Piper Corporation on or about March 9, 1971?

A Approximately $51.92.

Q Could you relate to us how you arrived at those conclusions?

A Yes.

Q If you are going to refer to the charts during the course of your testimony, it would help if you identify them before you refer to them?

A All right.

Appendix B, which is the third page in our book of exhibits, sets forth the computations which were made in the process of deriving these values.

The first input involved a projection prepared by the Piper Aircraft Corporation reviewed by us of $6 per share for the fiscal year ended September 30, 1973. We then examined the relationship of Piper's price-earnings ratio relative to that of the Standard & Poors 425

I have talked to the principal bank and the principal officer in that bank on the account to satisfy myself as to the availability of these funds.

THE COURT: At what rate?

THE WITNESS: The prime.

MR. LIMAN: Did he say what bank, your Honor? I didn't hear it.

THE WITNESS: The Pittsburgh National Bank.

A (Continuing) In addition, Piper's leeways under its note agreement provides for additional borrowing, senior borrowing of approximately nine million, and there is no limitation in that agreement, I do not believe, on the subordinated borrowing.

Piper's ratio of debt to total capital is below that of Cessna and well below that of Beech.

Exhibit 24 is the view of Booz, Allen & Hamilton with respect to sales for Piper in 1975 and has been inserted here so that we can see that 1973 is not necessarily another peak, that there is a further projection.

The total projected sales, including parts, amounts to approximately 192,000,000 to 250,000,000 in the opinion of Booz, Allen in 1975.

Exhibit 2t sets forth the organization of Piper Aircraft Corporation in 1968, and Exhibit 26 sets forth

the organization of the company on a current basis. Obviously there have been quite a few changes, quite a lot of delegation of responsibility by function.

We noticed one or two other changes, other than organizational changes. There seems to be a high degree of agreement on the marketing strategy to be employed by the company in the future, whereas in the past there was some uncertainty and division on these points. There is a revision in the distributor policy under way, designed to produce less volatility in Piper's earnings and sales as compared to the past.

There is some revision in product development procedures. They have been systemitized to a greater extent. There has been a new view taken of military business to the extent that off-the-shelf sales can be enhanced as opposed to the ordinary type of defense contract.

There has been some accent on protecting the company against periods of future money stringency by entering into agreements with AVCO with respect to the pressurized Navajo and Ford Motor Credit Company, designed to provide for planning and warehousing plans for distributors and dealers.

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A (Continuing) We found the management, and we talked to a large number of people, to be articulate, highly organized, with timely data readily available to them.

And one further point: We found a new interest in technological possibilities and principally involving fiberglass-aluminum composites as a possibility for future development.

Exhibit 27 through Exhibit 30 is statistical and financial data relating to Piper and Beech and Cessna and is provided primarily for my convenience.

Now this is the material that supports the projection of $6 per share in 1973, together with the price-earnings ratio of 13.6 which we employed.

THE COURT: Gentlemen, we will take a brief recess.

(Recess)

MR. ARNING: Your Honor, before the examination of the witness resumes, I offer in evidence now Defendants' Exhibits AE-1, AE-2 and AE-3, which were marked yesterday.

THE COURT: What do they consist of?

MR. ARNING: These are the agreed findings that First Boston wants to put into the record.

MR. LIMAN: There were some changes that were made and we will look at them --

MR. ARNING: No, they were done.

MR. LIMAN: Oh, they have been done.

The understanding on AE-3 is that it is offered not for the truth of what is asserted or at least it is not admitted for that, but it is being offered without objection by me simply as information that was before First Boston in rendering its opinion on value in this case as set forth in the finding, your Honor, which refers to this.

MR. ARNING: That is agreeable.

MR. LIMAN: There are some objections on relevance which we will note: 47-C, 77-C and 77-B, for the record.

THE COURT: The SEC has no interest in this offer?

MR. KUSHNER: No, your Honor, it does not.

THE COURT: Received accordingly.

(Defendant's Exhibits AE-1 through AE-3 for identification received in evidence.)

BY MR. RYAN:

Q In your opinion, what would be the value of Chris-Craft's approximately 42 per cent interest in

xx

Piper Aircraft Corporation -- what would it have been if on its exchange offer to Piper shareholders which opened on July 24th and closed on August 4, 1969, Chris-Craft had obtained the 300,000 shares of Piper common stock sought, thereby giving Chris-Craft a majority of the outstanding shares of Piper common stock?

A In our judgment the value would be the same, roughly, as the values which we have already supplied. Any difference would be attributable to a so-called control premium, which when analyzed in its separate elements in the circumstances that prevailed here would not seem to be justified or warranted.

We have looked at those elements, including the element of financial reporting, the ability to direct the business and policies of Piper, the ability to merge or sell assets, declare dividends, sell stock, contra-seasonal or cyclical effects or any prospects of an enhancement in a PE ratio of the acquirer.

Taking the first, that of financial reporting, we asked Price, Waterhouse and Company to prepare an analysis of the historical results of operations of Chris-Craft --

Q Does that appear in your volume?

Q Is it your understanding -- I see you are confirming it with somebody --

A No, I am not talking loud enough.

Q Do you know to whom these people to whom you got these estimates from report -- to whom they report?

A Yes. John Leeson reports to John Pool.

Q And Mr. Pool reports to Mr. Mergen?

A That is correct.

Q And did you in your examination of Piper discover that Mr. Mergen reports to somebody at Bangor Punta?

A Yes.

Q To whom?

A I am not aware precisely.

Q If at the time of an appraisal these estimates were revised downward, your figures would be lower?

A Yes, they would.

Q Did anybody tell you these forecasts were ever submitted to the board of directors of Piper?

A They were not submitted to the board of directors of Piper; they were submitted to Charles Pool, Tom Gillespie and Joe Mergen for thir scrutiny and we

2196A

company.

Q Do you know what role these people had then?

A No.

Q Weren't they in the marketing department then?

A I don't know the answer to that question.

Q You also cited the fact that there has been a change in the distribution policy?

A That's correct.

Q Certain choices were made?

A I think what I said is that the company is in the process of amending its distribution policy.

Q Do you know whether this is under the guidance of Bangor Punta?

A I would have to assume that.

Q In fact haven't you determined that the direction and character of this corporation has changed since 1969 when Bangor Punta obtained control?

A I think my statement suggests that it is too early to make any determination of that type. I do see and have gained impressions with respect to changes, but it is a period of some two or three months since Mr. Mergen was installed as president.

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Q Does your valuation depend on the capability of the management of Piper to live up to the expectations reflected herein?

A Yes.

2B

Q And are you saying that in recommending this to a purchaser you would not take a discount for their inexperience at Piper?

A Oh, I certainly would not. May I just say that Mr. Mergen is new at Piper but he is not new in the field of aeronautical engineering, aeronautical production, and the like.

Q Well, Mr. Mergen was with AVCO-Lycoming, wasn't he?

A Yes.

Q And AVCO-Lycoming was the engine manufacturer for Piper?

A That is correct.

Q You testified that marketprice in May should have been this figure of $55 a share?

A Yes, sir.

Q And you are aware that Bangor Punta and Chris-Craft both paid more than that in their quest for control of this company?

A Yes, sir.

Q When you say there is no value to control, is it your testimony that these companies made a misjudgment in paying to try to obtain it?

A I would have to say that it depends on the facts they had available in forming their judgment.

MR. LIMAN: WE have objections on competency. This is on our affirmative case.

MR. RYAN: First I offer as Exhibit AF for identification -- these are our uncontested findings in the suit by Chris-Craft against Bangor Punta, Mr. Wallace and Mr. Salgo.

MR. PENNOYER: No objection.

(Defendant Exhibit AF for identification received in evidence.)

MR. RYAN: Exhibit AG for identification, your Honor, are the agreed findings in our Bangor Punta suit against Chris-Craft Industries.

In addition, your Honor, as I indicated before, no answer was filed by Bangor Punta in Chris-Craft's action and it was agreed that our affirmative complaint in the Bangor Punta case would be considered as an affirmative defense in the Chris-Craft action on the pari delicto defense, and therefore these agreed findings are also submitted in the Chris-Craft litigation on the issue of whether we have established a pari delicto offense.

THE COURT: What is the prayer for relief that Bangor Punta is requesting against Chris-Craft?

MR. RYAN: Damages, your Honor.

THE COURT: How much?

MR. BARRETT: The difference between the price which Bangor Punta paid for its Piper stock and the price which it would have paid absent the market manipulation caused by Chris-Craft's activities, your Honor.

THE COURT: And how much was that?

MR. RYAN: Well, it is approximately $15, your Honor, per share for approximately 800,000 shares.

THE COURT: In other words, you are taking the $55 per-share price as the base?

MR. RYAN: Correct, your Honor.

THE COURT: That $55 per-share price having been testified to here by Mr. Fitzgerald, and you are comparing that with the actual cost of the shares which you say resulted from the struggle?

MR. RYAN: That is correct, your Honor.

That is Exhibit AG for identification.

MR. ACKELL: Your Honor, we have many objections with respect to relevancy and competency with respect to these proposed findings, all of which we advised you by letter on February 11, 1971, and if your Honor desires I can read into the record which findings we object to and on what basis.

THE COURT: Well, I think that would be useful, but in a word, what is your objection?

MR. ACKELL: Your Honor, the whole Bangor Punta case in our judgment is built on inferences that cannot properly be drawn upon any evidence that is admissible in this case.

THE COURT: Well, is the evidence contested apart from the inferences to be drawn therefrom?

MR.ACKELL: On competency, your Honor. The evidence consists in large part of conversations between people outside of the presence of Chris-Craft, people who, when asked whether they spoke with Chris-Craft, indeed testified that they did not speak with Chris-Craft, your Honor.

THE COURT: Does this go outside of the area of the agreed facts, or are the agreed facts part of the hearsay that you are complaining about?

MR. ACKELL: They are a very large part of the hearsay, your Honor.

THE COURT: NOnetheless it is agreed that those are the facts, but the competency of those facts is disputed, is that it?

MR. ACKELL: No, your Honor. We agreed that certain depositions were taken, and in the course of those

depositions that certain people gave certain testimony. We do not agree that the testimony represents facts or that if they do represent facts, such facts would be admissible against Chris-Craft in the Bangor Punta lawsuit.

THE COURT: All right. That is very clear.

Why don't you just prepare a schedule and add it to the record, setting forth the specific objections that you were aboutto recite for the record?

MR. ACKELL: Your Honor, I have sort of coded this list attached and indicated objections with respect to relevancy and competency. I will be happy to hand it to the court reporter and have it put physically into the record.

THE COURT: All right. Let me see it now and I will give it to the court reporter for inclusion as part of the record.

Now I take it from the fact that there are some numbered findings of fact which have no circles or squares around them, that you have no objection to the facts therein stated?

MR. ACKELL: That is correct.

THE COURT: I think what you had better do: Instead of the reporter attempting to restate it

in the record he can Xerox this and put it in physically as the next page of the record at this point.

MR. ACKELL: Very good suggestion.

(Defendant Exhibit AG for identification received in evidence.)

AGREED FINDINGS OF FACT
relating to claims of BANGOR PUNTA CORPORATION
as plaintiff in 69 Civ. 2354:MP and of
PIPER AIRCRAFT CORPORATION
as counter claimant in 69 Civ. 2227:MP

352, 354, 355 and annexed documents, 357, 358, 359, 361A, 362, 363, 365, 367, 368, 369, 371, 372, 373, 374, 376, 377, 378, 379, 382, 383, 384, 386, 387, 388, 389, and annexed document, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 404, 405, 406, 407, 408, 409, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 425 and annexed documents, 426, 427, 428, 429, 430, 432, 433, 434, 436, 437, 438, 439, 440, 441, 442, 444, 446, 447, 448, 449, 451, 452, 453, 454, 455, 456, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 472, 473, 474, 475, 476, 480, 481, 482, 483, 484, 485, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 536, 537, 538, 539, 543, 544, 546, 547, 549, 550, 550A, 551.

O = RELEVANCY

□ = COMPETENCY

THE COURT: We will take a ten-minute recess.

(Recess.)

MR. ACKELL: Your Honor, there is some additional evidence Chris-Craft would like to submit in support of its case.

THE COURT: Have the defendants rested?

MR. RYAN: No, your Honor. We still have more exhibits to put in.

MR. BARRETT: We offer Defendant's Exhibit AN for identification, which is our findings 384 and 386. These are agreed findings, your Honor.

MR. PENNOYER: No objection.

MR. ACKELL: No objection.

(Defendant's Exhibit AN was received in evidence.)

(Defendant's Exhibit AO was received in evidence.)

MR. BARRETT: Defendant Exhibit BG for identification is pages 324 to 328 of the deposition and testimony of Thomas Williams taken February 10, 1970, in this action.

MR. ACKELL: No objection.

(Defendant Exhibit BG for identification received in evidence.)

THE COURT: Now as I understand it, these exhibits are all integrated into the agreed findings, is that right --

MR. BARRETT: No, your Honor --

THE COURT: -- or are referred to in contested findings.

MR. BARRETT: Yes, that is correct, your Honor.

THE COURT: And to the extent that they are integrated into the agreed findings, they are there merely so that I can examine the underlying documentation for the findings should I so desire or for any other purpose?

MR. BARRETT: That is correct, your Honor.

THE COURT: Now how will I know that the contested finding is keyed to any of these particular exhibits? Is there a cross-reference?

the motions made previously to dismiss the complaints in 69 Civil 2227 and in 70 Civil 3940.

THE COURT: Just let me understand what the numbers are. 2227 is Bangor Punta as the plaintiff?

MR. RYAN: No. We are defendant in that action. Bangor Punta, Nicholas Salgo and David W. Wallace are the defendants in that action. In 69 Civil Action 2354 Bangor Punta is the plaintiff.

THE COURT: And the defendant in that case is Chris-Craft?

MR. RYAN: Chris-Craft Industries.

THE COURT: Yes.

MR. RYAN: And then, in 70 Civil Action 3940, the defendant -- Bangor Punta is the defendant. That is the SEC action.

THE COURT: All right.

MR. RYAN: And we renew our motions to dismiss the complaints in 69 Civil Action 2227 and 70 Civil Action 3940.

THE COURT: Decision is reserved.

MR. LIMAN: Your Honor, on Bangor Punta's affirmative case, Chris-Craft moves to dismiss on the ground that they have failed to establish a prima facie case. That is the same motion that lies to the Piper counterclaim.

engine on the Pocono. Most of it has been read to your Honor. This is making --

THE COURT: What, in about two sentences, do they say?

MR. LIMAN: I say they say that the engine was experimental, that it was not delivered in its form for use as a production engine until some time in June, that it didn't measure up to the expectations of Piper or the requirements of Piper and that the project as a result was abandoned.

It also says that ~~like it was~~ Lycoming told ~~so~~ Piper it would use its best efforts to produce the engine, that it believed that it could produce the engine and that in the past, when it had said that it would use its best efforts to produce an engine, it had succeeded.

I think that clearly summarizes it.

THE COURT: Anything else?

MR. LIMAN: Yes, your Honor.

On the Bangor Punta affirmative case and the Piper counterclaim, I offer Plaintiff's Exhibit 129 for identification, which is a memo from Mr. Lushing to Mr. Salgo and others, produced by Bangor Punta.

I offer this on their affirmative case.

(Plaintiff's Exhibit 78-C for identification received in evidence.)

THE COURT: What does Exhibit 129 say?

MR. LIMAN: In substance, it says they made an investigation before they made a commitment to buy Piper stock.

MR. RYAN: Is this the Lushing examination?

MR. LIMAN: No, sir. It has nothing to do with railroad. You mean, examination before trial?

MR. RYAN: I have no objection.

MR. LIMAN: Next, your Honor, on their affirmative case, I offer as stipulated testimony the letter of Mr. Gitlin of Cravath.

What this says, your Honor, is that there was a reference in an earlier prospectus of Chris-Craft on its debenture offering to a 300,000-share tender.

The defendants claim that that related to Piper and that Chris-Craft was looking at Piper in October.

MR. Gitlin, who prepared that, says that it related to ~~Harold M~~ Harley Davidson and attaches a copy.

MR. RYAN: No objection.

MR. PENNOYER: No objection.

(Plaintiff's Exhibit 139 for identification received in evidence.)

MR. LIMAN: With respect to the defendant's affirmative case, I offer Exhibits 141, 142, 143. 144, 145.

146, 147.

In essence, your Honor, what these say is that they go on competency of the proposed findings by Bangon Punta and Piper. They show that none of these people spoke -- in most cases that they did not speak to Chris-Craft and that their actions were not based on any information that came from Chris-Craft. They round out portions that Mr. Ryan has submitted in his case.

THE COURT: Who are these people?

MR. LIMAN: They are various fund managers who either sold Piper in January of 1969 or bought Chris-Craft in January and February of 1969 and sold Chris-Craft in March or April or May of 1969.

MR. RYAN: No objection.

MR. PENNOYER: No objection.

(Plaintiff's Exhibit 140 trhough Exhibit 147, inclusive, for identification received in evidence.)

MR. LIMAN: Next, your Honor, I offer Exhibit 149 for identification, which is a memorandum from the Chase Bank. This, your Honor, relates to a claim in the findings of the defendants in their affirmative case that Chris-Craft spoke to the Philadelphia National Bank in November or December about Piper and that the Philadelphia National Bank then spoke to the Chase Bank, which is one of the partici-

pants in the loan.

It is stipulated -- and I have the witness from the Chase Bank here, Mr. ~~Reel~~ Rhiel, that he would testify that the first request by the Philadelphia National Bank to the Chase Bank to participate in any loan to Chris-Craft came on January 27, 1969, as reflected in this memorandum, which was given to him, and that he took up the matter from there and agreed to participate.

MR. RYAN: That is, to your witness's knowledge, that is what he would testify.

MR. LIMAN: Well, I will put him on the stand.

THE COURT: He is not going to testify to something he doesn't know about.

MR. LIMAN: That's right. This is to his knowledge.

Now this is occasioned, your Honor, by the fact that Mr. Potts of the Philadelphia National Bank in his testimony said that he thought that his first contact on this matter was November or December. Then he said December or January.

The defendants have quoted excerpts of Mr. Potts' examination in their findings. Mr. Potts I had hoped would be available, but Mr. Potts is somewhere either in Augusta or some place like that and is not available to testify.

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I could not reach him. I will therefore offer his entire deposition, and I will point out to your Honor the portions that I rely on, which is to establish that Mr. Potts was giving his best estimate of when he spoke and that he himself said that it was subject to checking his records.

Mr. Potts did not review his transcript. We waived signing and certification, and, as a result, I am not able to produce him. I do have one witness, his assistant, and I will put him on the stand now, and it will take about five minutes.

THE COURT: You say that the transcript merely indicates that he testified that he was spoken to in November or December and then later on possibly in December or January, but that he wasn't sure?

MR. LIMAN: He wasn't sure, and they make a point of it.

THE COURT: That proves exactly what?

MR. LIMAN: What?

THE COURT: That proves exactly what?

MR. LIMAN: They say in their affirmative case that this proves that Chris-Craft had in mind in November and December going after Piper. I don't think that it amounts to --

THE COURT: What difference does that make?

MR. LIMAN: I don't think it makes any difference, but since there hasn't been a ruling on it, I have to protect my record.

THE COURT: What record are you protecting? What difference does it make when they decided to move in?

MR. LIMAN: They say, your Honor, that we decided at a time when we were raising money from the public and that we should have disclosed in our prospectus to the public --

THE COURT: Which was dated what?

MR. LIMAN: Which was dated ~~September~~ December 10, I believe, 1968. I regard this as a matter on which I would like to have the record protected.

THE COURT: Go ahead.

(Plaintiff's Exhibits 148 and 149 for identification received in evidence.)

MR. LIMAN: I would now call Mr. Fred Miller.

THE COURT: Can't you stipulate what he would testify to?

MR. LIMAN: Your Honor, I saw the man for the first time ten minutes ago. His testimony will take ten minutes, and it will be easier and faster to put him on the stand.

THE COURT: All right.

6A

FREDERICK R. MILLER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q What is your occupation?

A I am a banker.

Q What is your position?

A I am president of the Waterbury National Bank.

Q In 1969 were you employed by the Philadelphia National Bank?

A Early in 1969. I left the bank on, I think it was, April 1, 1969.

Q You had been employed there for some years before?

A Yes.

Q What was your position at the Philadelphia National Bank?

A I was, in early 1969, a vice-president.

Q Did you have any connection with Chris-Craft Industries?

A Yes.

Q What was your relationship?

A I was the officer at the bank who was immediately responsible for the Chris-Craft relationship with the bank.

Q To whom did you report?

A My immediate supervisor was senior vice-president Chanley Archer.

Q Did you also report to Robert Potts?

A Mr. Archer's immediate superior was Robert Potts, who was executive vice-president.

Q Did there come a time when you learned Chris-Craft was purchasing Piper stock?

A Yes.

Q When was that?

A In January of 1969.

Q How did you learn it?

A Well, I had conversations in New York with the management of Chris-Craft, in January, and they indicated that they were buying Piper Aircraft stock. I believe there was also an announcement in the paper in January to this effect.

Q Did there come a time when you were asked to make a loan to Chris-Craft for Piper stock?

A Yes.

Q Tell the Court when and who made the request to you?

A The first time I had a request for this purpose it was made by Herbert Siegel, who was president and chairman

of Chris-Craft, and it was a Sunday evening, in the middle of January -- I think actually the date was the 26th of January. He called me at home. I remember it because it was a very unusual thing, and he indicated to me in the telephone conversation that he wondered whether it was possible that the bank could arrange a $15,000,000 loan for this purpose, and I said I thought it was possible and that I would explore this the following day, on Monday, and get back to him.

Q What did you do on Monday with respect to this matter?

A The first thing I did was to talk with Bob Potts, who was very close to the Chris-Craft organization and management, and got clearance, if you will, to that extent, that this was something we should try to do.

Q And did you try to do it?

A Yes, we did.

Q And what did you do, in trying to do it?

A I called two banks in New York that we were particularly close to, one of which was quite close to Chris-Craft, one being the Chase, who had a direct relationship with Chris-Craft, and the other was the Marine Midland Bank, and asked them both if they would be willing to participate in such a loan were we to make it to Chris-Craft.

Q Did the Chase agree to participate?

A Yes.

Q When did you report back to Chris-Craft that you were prepared to make the loan, and did you do it yourself?

A Yes, I would have done it myself. I am sure it must have been that Monday. There wouldn't be any point in delaying it.

Q Prior to that time did the bank, to your knowledge, ever make a commitment to Chris-Craft to lend the money for Piper?

A No.

Q In order to make a loan, do you have to obtain approval at the bank from a committee?

A For any loan of that size, yes, sir, certainly.

Q Was approval sought?

A Yes.

Q When was approval sought?

A Well, the loan request was presented in normal procedure on Thursday to our senior loan committee and then Friday of that week to the executive committee.

Q Do you recall if I show you this document -- can you tell me the date and what it is?

A This is the write-up from the minutes of the

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executive committee confirming the fact that we would or that the Philadelphia National Bank would indeed make available a $15,000,000 loan to Chris-Craft.

Q When was that?

A January 31, 1969.

Q Did the subject of compensating balances ever come up with Chris-Craft in connection with this loan?

A No.

Q Or any loan?

A No, not that I recall.

Q Did you ever ask them to maintain compensating balances?

A No.

Q Did they ever promise to maintain compensating balances?

A No.

THE COURT: Did they keep them?

THE WITNESS: Yes.

Q Did Mr. Siegel tell you why he was calling you on Sunday?

A Yes.

Q Why?

A To provide banking backup for the purpose of Piper stock.

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Q Did he tell you he had tried to reach Mr. Potts?

A As I recall the conversation, he said he had tried to call Mr. Potts and had not been able to get in touch with him.

Q Did the subject of a loan to Chris-Craft for the acquisition of Piper stock ever come up between you and Mr. Potts prior to that time?

A No.

MR. LEMAN: No further questions.

CROSS EXAMINATION

BY MR. RYAN:

Q Did you know, Mr. Miller, that in the fall of 1968 Chris-Craft had asked the Philadelphia National Bank for a revolving line of credit for general corporate purposes of up to $15,000,000?

A A general line of credit for that amount?

Q Revolving line of credit.

A I don't know that. I would doubt it. Our legal lending limit was $12,000,000.

MR. RYAN: This is an agreed finding, No. 368, in our case, that that is the fact.

THE COURT: Read the agreed statement of facts to the witness and ask him whether that refreshes his recollection. Read it as it is stated.

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Q "In the fall of 1968 Chris-Craft asked PNB," which is the Philadelphia National Bank, "for a revolving line of credit for general corporate purposes of up to $15,000,000. The Philadelphia National Bank made a loan of $15,000,000 to Chris-Craft on February 3, 1969. The entire proceeds thereof were among the funds [illegible]ay for Piper shares received by Chris-Craft on its c[illegible] tender offer which closed on February 3, 1969."

THE COURT: Having heard what the parties have agreed to as facts, does that refresh your recollection in any way as to what occurred in the fall of 1968?

THE WITNESS: No, sir, it does not.

MR. RYAN: No further questions.

REDIRECT EXAMINATION

BY MR. LIMAN:

Q Did Chris-Craft from time to time request loans from the Philadelphia National Bank for general corporate purposes?

A Yes.

MR. LIMAN: No further questions.

MR. PENNOYER: No questions.

THE COURT: Did you make any inquiry into your Philadelphia National Bank records before coming here today to see what the nature of the account was prior to this time

in January of 1969?

THE WITNESS: No, sir.

MR. LIMAN: They have been produced, your Honor, in the examination.

THE COURT: I understand that. I am asking the witness whether he did it. That may explain why he doesn't know about the fall of 1968.

All right, thank you very much, Mr. Miller. You are excused.

(Witness excused.)

MR. LIMAN: With that, your Honor, we rest in both cases.

THE COURT: All parties rest. All motions renewed--

MR. KUSHNER: Your Honor, the Commission has several further exhibits to put in.

MR. SHIMER: Before the Commission puts in its exhibits, on behalf of Piper I would like to renew my motion and add one additional ground, and that is that there is no evidence in this record from which the Court can assess any damages as against Piper or the Piper defendants on this so-called separate liability claim, even assuming the truth of all of Chris-Craft's allegations against it, in that, specifically, there is no proof of the value of Piper shares if this alleged non-disclosed information had

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MR. KUSHNER: I am aware of no such testimony by Mr. Hutchins, your Honor.

THE COURT: What was the fact is, Exhibit 152 when read with Exhibit 64 indicates that the content of the August 15, 1960 memorandum was the investigation that was going on in connection with taxes?

MR. RYAN: Exactly, your Honor.

THE COURT: Well, in that connection I will receive Exhibit 64 and 152.

(Plaintiff's Exhibits 64 and 152 were received in evidence.)

MR. KUSHNER: I offer as Exhibit 153 a memorandum from Mr. Wriddle to Mr. Murphy, dated October 6, 1969, which has as its subject "Tax basis to Bangor Punta of sale of stock of Bangor and Aroostook Railroad," and sets forth the figures on the tax basis.

THE COURT: Let me ask you, Mr. Kushner, doesn't all this tax investigation thatyou are proving here disprove your contention?

MR. KUSHNER: No, your Honor.

THE COURT: It doesn't?

MR. KUSHNER: Not in the least, your Honor.

THE COURT: It seems to be exactly in conflict with the notion that there was a reasonable probability or possibility of a deal which should have been disclosed on July 18.

It looks like the whole thing was completely inchoate and subject of investigation and not agreed upon by anybody at any of the times that are now being discussed.

What would they be doing all this for if they had an intention to go forward and had arrived at a reasonable probability of a deal?

MR. KUSHNER: Simply to find out whether they may want to cast the transaction as a sale of assets rather than a sale of stock, but, one way or another, your Honor, they had that deal.

THE COURT: They had the deal? Well, the evidence, as far as I have heard it, and I will examine the written documents, hardly proves anything like that.

MR. KUSHNER: I trust your Honor will give us the opportunity topresent post-trial briefs to you.

THE COURT: You don't need briefs unless

you think I have overlooked some of the oral and will overlook the written documentation. As I have heard this testimony, it seems to me that the whole situation was backed into with great reluctance in September of 1969 and was a completely amoxphous affair at any given time before that date. That is my impression of the credibility of the witnesses here.

MR. KUSHNER: Your Honor, I would respectfully request an opportunity to present post-trial briefs.

THE COURT: You will have every opportunity. I don't expect to decide the case this afternoon.

MR. RYAN: I have no objection to 153 for identification except to its characterization as to the establishment of the tax basis. That matter is still actually a subject of dispute.

THE COURT: The exhibit is received and the characterization will have to be determined from reading the exhibit.

MR. RYAN: Thank you, your Honor.

(Plaintiff's Exhibit 153 was received in evidence.)

THE COURT: I just want you to understand,

Mr. Kushner, that I am prepared to accept your test and on the basis of your test of when a disclosure should be made, it is my estimate of the credibility of the witnesses as has been shown to me on the stand and such perusal of the documents as were contained in Exhibit 21 that this matter was hopelessly inchoate even through September 9.

MR. KUSHNER: Your Honor, I won't start --

THE COURT: I just tell you that so you can address yourself to it in your brief.

MR. KUSHNER: I want to address myself to things like understandings in writings, I want to address myself to things like board of directors decisions --

THE COURT: You address yourself to the things that you consider significant, but I am telling you now you won't have to argue for your standard of disclosure.

MR. KUSHNER: I understand that.

THE COURT: The question is, does the proof come within the standard. And, by the way, what is the significant date, July 18 and August what?

MR. KUSHNER: August 27, your Honor -- the prospectus had to be delivered by dealers up until August 27.

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MR. KUSHNER: I wish to read in one question and one answer --

THE COURT: Please do so.

MR. KUSHNER: -- from the deposition of Cyrus Paul Priddle, taken on December 3, 1970, page 28, line 4:

"Q Did you have anything to do with preparing the registration statement that Bangor Punta filed for its exchange offer for the shares of Piper Aircraft Corporation? The registration statement was filed on May 29, 1969.

"A No, sir."

Fine, your Honor, I wish to read in one brief part of Exhibit 47 for identification, the minutes of the Bangor Punta board meeting of August 7, 1969. The part I am reading in reflects the approval of the minutes of May 21.

This is on page 2, at the top:

"The minutes of the special meeting of the board of directors held on May 21, 1969 having been mailed to the directors at an earlier date, were discussed and the resume thereof was briefly reviewed. Upon motion duly made, seconded and carried, it was resolved that

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the minutes of the special meeting of the board of directors of the coporation held May 21, 1969 be and they hereby are approved."

Your Honor,that concludes the commission's rebuttal.

THE COURT: The commission rests?

MR. KUSHNER: Yes, sir.

THE COURT: I take it the motions are renewed?

MR. RYAN: Yes, your Honor.

THE COURT: Decision is reserved. I think that brings us to the close ofthe matter except for any final submission of argument that counsel wishes to supplement the briefs.

I will say that the case has been extraordinarily well prepared on all sides and the painstaking effort that counsel have made to agree on the myriad facts involved in this case indicates the desire for cooperation with the Court and other counsel in the case to a degree that I do not recall in some 40 years of practice at the bar myself.

Were it not for that cooperation this case might easily have consumed several months of trial

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andinstead of that, the salient issues have now been presented through the indefatiguable labors of the plaintiff's counsel and the cooperation and labors of defendants' counsel in just short of two weeks.

I wish to compliment every lawyer in the case who has thus extended himself and aided the Court and their clients by reason of the fact.

MR. LIMAN: Thank you, your Honor.

THE COURT: I would like to give a reasonable amount of time for any further submissions. Unless the additional submissions will involve refocusing any of the matters that are already amply briefed, it won't make too much difference to me when the briefs come in because I intend to re-read everything in the record, but if I need any reorientation as a result of anything that has occurred at the trial, including any chance remarks that the Court may have made, perhaps you better get that to me in brief style early and amplify it later.

I might also add that anybody who is so foolish to rely on any impressions the Court expressed as indicative of the ultimate determination of the Court, would be making a serious mistake, because I intend only after mature reflection to come to a final conclusion as

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHRIS-CRAFT INDUSTRIES, INC.,

v. 69 Civ 2227

PIPER AIRCRAFT CORPORATION, et al.,

BANGOR PUNTA CORPORATION,

v. 69 Civ 2354

CHRIS-CRAFT INDUSTRIES, INC.

S. E. C.,

v. 70 Civ 3940

BANGOR PUNTA CORPORATION

Before:

HON. MILTON POLLACK, District Judge

New York, February 6, 1971
10:00 a.m.

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...

THE CLERK: SEC versus Bangor Punta Corporation.

MR. KUSHNER: Your Honor, Mr. Dumaine is here and ready to testify.

THE COURT: All right.

...

F R E D E R I C K C. D U M A I N E, called as a witness by Securities and Exchange Commission, having been first duly sworn, testified as follows:

THE CLERK: State your name, sir.

THE WITNESS: Frederick C. Dumaine.

MR. KUSHNER: Shall I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. KUSHNER:

Q Mr. Dumaine, where do you reside?

A 201 Newton Street, Weston, Massachusetts.

Q What is your business address?

A 4500 Prudential Center, Boston.

Q Are you the president of Amoskeag Company?

A I am.

Q Since when have you been president of Amoskeag?

A 1951.

Q Are you also director of Amoskeag?

A Yes.

Q Since when?

A Early 1920s.

Q How long have you been with Amoskeag Company?

A Since 1914.

Q Can you describe briefly the business of Amoskeag?

A At the moment? It is a --

Q Yes, sir.

A -- it is an investment trust.

Q Can you tell us some of the investments?

A Our largest investment at this time is the Fieldcrest Mills, 40 per cent of its ownership. We have controlling interest in two bus companies, Bangor and Aroostook Railroad, Fanny Farmer and numerous other stock exchange issues.

Q Mr. Dumaine, what are your duties as president of Amoskeag?

A To run it.

Q Was this also true during 1969?

A Yes,sir.

Q Can you give a brief description of your business experience in the railroad industry prior to 1969?

A Yes, sir. I was director of the Maine Central of Boston Maine Railroads for about 15 years, way back in the early twenties and thirties. I ran the New Haven after

my father's death, successfully I must say, for three or four years until I was beaten in a proxy fight in 1954. I took over the Delaware and Hudson when its president left in about 1967 or 1968, until it was merged into the Norfolk & Western.

Q Do you know Curtis Hutchins of Bangor Punta?

A Yes, for a number of years.

Q How long have you known Mr. Hutchins?

A Quite a number of years.

Q Prior to 1969 did you have any business dealings with him?

A He was -- yes, sir, he was president of the Bangor & Aroostook Railroad and he was with the feeder line of the New Haven. We made many arrangements for better service from Maine to New York.

Q This was during the period that you were in charge of the New Haven?

A Correct.

Q In May, 1969 did you have discussions with Mr. Hutchins regarding the purchase by Amoskeag of the Bangor & Aroostook Railroad?

A Yes, sir.

Q For the sake of convenience I will be referring to the Bangor & Aroostook Railroad from now on as "The

Railroad" so you will understand me.

Do you recall when your first discussion with Mr. Hutchins in May 1969 concerning The Railroad took place?

A A day or so prior to the 12th of May I called him to see if he wasn't in a better mood to sell his property than he had been prior.

For many years we had been working trying to develop a New England system and we made a date for the 12th of May.

Q Was that the first discussion you had with him in May 1969, the 12th of May?

A Yes, sir.

Q Where did this discussion occur?

A He took me to the Pinnacle Club in New York City.

Q Who was present beside you and Mr. Hutchins?

A Just the two of us.

Q As best you can recall what was the substance of what Mr. Hutchins said and what was the substance of what you said at this May 12th meeting?

A He assured me he had been assigned by his board to negotiate the sale of the property, and wanted to know if I was still interested.

I was quite keenly interested.

Q Is this something you told him?

A Yes.

Q All right, please go on.

A We discussed it back and forth. Prices quite often came up in the conversation, of course. He explained how he was on their books for about $18 million. We discussed its potential earnings, how do you figure the value of a corporation of that kind.

I gave him a formula on which I thought it could be bought if he would consider. There was a chance of putting the Maine Central and the Bangor & Aroostook together; they were Maine-to-Maine railroads, they were non-competitive, that neither one of them could make much, if any, money by themselves, which he agreed.

I think a lot of railroads were selling around ten times earnings at that time.

We both agreed that at least a million dollars could be saved in operating expenses.

Under ICC rules, over my years of experience, when two railroads go together any savings is equal to both. In other words, if one makes a lot of saving both get the credit for half of the total saving. It was simple enough. Ten times half a million dollars savings was $5 million.

Q Is that what you-- the figure you mentioned to Mr. Hutchins? Is that the price you mentioned to Mr Hutchins?

A He listened to my formula. He said it was pretty low.

Q Is there anything else you can recall about the substance of this first meeting or May 12th with Mr. Hutchins?

A When we agreed to meet again he would have to refer this back to his board, even though they had given him full authority as I understood it to make an agreement.

Q And --

A He had to come to Boston within a couple of days and I think it was shortly thereafter about I think the 15th of May he came to Boston again.

Q And he met with you on the 15th of May 1969?

A Yes.

Q Where did that meeting occur?

A At the Arroskeag office.

Q Who was present?

A The two of us.

Q As best you can recall what was the substance of what Mr. Hutchins said and what was the substance of what you said?

A Well, it was very much the same, Mr. Kushner, as the 12th luncheon. And it didn't last too long as I remember. But when he left he said, "I think we can make a trade, but

I am sure my board can't give you any firm commitment.

Q What did you say with regard to the price at that May 15th meeting?

A I didn't say the price was too low. I think I had a hunch that money was getting tight and Bangor Punta always in looking for a trade of some sort they probably needed some money.

Q Did you mention a price to Mr. Hutchins for The Railroad during the May 15th meeting?

A Oh, yes. Five million.

Q Five million?

A Oh, yes.

Q Did Mr. Hutchins try to up the price?

A Yes.

Q What was the result of that?

A The result?

Q Yes.

A I didn't move.

Q You said a few moments ago that Mr. Hutchins told you at that May 15th meeting he couldn't make you a firm commitment.

A I didn't hear that.

Q Did you say a few moments ago that Mr. Hutchins told you at the May 15th meeting that he could not make a

firm commitment?

A That's right.

Q Did he tell you the reason?

A Yes.

Q What did he tell you?

A His company was in a registration statement before the SEC and I think in the Piper Aircraft Company that they were trying to buy at that time.

MR. KUSHNER: May I have these three papers marked for identification, please.

THE COURT: Did you give him any option?

THE WITNESS: No, sir.

THE COURT: Did he ask for an option? On May 15th?

THE WITNESS: No, sir.

THE COURT: So the net of it was it was just talk?

THE WITNESS: Not talk, but he said when he finally left "I think we can make a deal."

THE COURT: But he wasn't willing to commit on that occasion and he didn't ask for an option?

THE WITNESS: He didn't ask for an option, no, sir. And I notified my board, I suppose --

THE COURT: All right, let Mr. Kushner ask you the questions.

THE WITNESS: Excuse me.

(Three documents marked SEC Exhibits 1, 2 and 3 for identification.)

BY MR. KUSHNER:

Q When Mr. Hutchins said at the May 15th meeting, "I think we can make a deal," what price was he talking about?

A My price.

Q Do you recall reporting to the Amoskeag executive committee on May 20th, 1969 concerning The Railroad?

A Yes, sir.

Q I show you Exhibit 1 marked for identification (handing).

Are you able to identify that?

A I identify the copy of the minutes of the executive committee on May 20th, 1969 at 11:00 a.m. signed by the secretary. I do.

Q Was it the regular course of business to prepare such minutes of executive committee meetings?

A Yes, sir.

Q Do you know whether it was also a regular procedure to send to all members of the executive committee copies of minutes of meetings?

A Yes.

Q Would such members include Mr. Stone?

A Yes, sir.

Q As best you can recall what did you report to the Amoskeag executive committee on May 20th, 1969 as far as The Railroad is concerned?

A There wasn't much discussion about it because for years we have been discussing this whole railroad situation in New England, and I just notified them shortly that it looked to me we might be able to buy it for five million dollars. And that I had obligated them, on a tentative basis, subject to board approvals and things of that sort, subject to government agencies. And I thought it would be a good buy and that we might do something with the Maine Central and if so, it looked to me like a very good investment.

THE COURT: Had you in fact obligated anybody to anything at that time?

THE WITNESS: I didn't hear, sir.

THE COURT: I say, had you in fact obligated anybody to anything at that time?

THE WITNESS: You mean my board?

THE COURT: You just said that you had obligated them subject to board and agency approval and I am asking you whether it is a fact, did you in fact obligate anybody to anything at that time?

THE WITNESS: I told my board --

THE COURT: Just answer the question.

Was there any obligation?

THE WITNESS: I misunderstand you, sir.

THE COURT: Was there any obligation that you had made?

THE WITNESS: When I -- when Mr. Hutchins left the room I felt I was obligated to pay five million dollars for the --

THE COURT: We are not talking about your emotions. I am asking did you commit to buy anything at that time?

THE WITNESS: Yes, sir.

THE COURT: How?

THE WITNESS: By saying I would pay five million dollars for the stock in the Bangor & Aroostook Railroad.

THE COURT: Did somebody say "I accept"?

THE WITNESS: No, sir, said "I think we can make a deal."

THE COURT: But you are very clear that nobody asked for an option and you didn't give any?

THE WITNESS: That is correct, sir.

THE COURT: Go ahead, Mr. Kushner.

Q Incidentally, Mr. Dumaine, at either of these meetings at May 12th and May 15th, 1969, was there any discussion of the purchase of the assets of The Railroad

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rather than its stock?

A No, sir.

Q I show you Exhibit 2 marked for identification and I ask you if you recognize that document (handing).

A You asked me what?

Q Do you recognize Exhibit 2 marked for identification?

A I recognize this letter of Bangor Punta Corporation dated May 27th, 1969 addressed to me.

Q Did you receive that letter from Curtis Hutchins?

A Yes, sir.

Q Do you recall when you received it? Do you recall when you received it, what day?

A Did I recall what?

Q What day you received it.

A This was the--

Q The letter of May 27th from Mr.Hutchins.

A I think it was that day.

Q How did you receive it?

A He handed it to me.

Q Mr. Hutchins came in to see you?

A Yes.

Q Did you discuss the letter with Mr. Hutchins when he came to see you?

rather than its stock?

A No, sir.

Q I show you Exhibit 2 marked for identification and I ask you if you recognize that document (handing).

A You asked me what?

Q Do you recognize Exhibit 2 marked for identification?

A I recognize this letter of Bangor Punta Corporation dated May 27th, 1969 addressed to me.

Q Did you receive that letter from Curtis Hutchins?

A Yes, sir.

Q Do you recall when you received it? Do you recall when you received it, what day?

A Did I recall what?

Q What day you received it.

A This was the--

Q The letter of May 27th from Mr.Hutchins.

A I think it was that day.

Q How did you receive it?

A He handed it to me.

Q Mr. Hutchins came in to see you?

A Yes.

Q Did you discuss the letter with Mr. Hutchins when he came to see you?

A Yes, because it was an explanation of about what the agreement stood for and how he felt about it.

Q As best you recall what was the substance of what Mr. Hutchins said and what was the substance of what you said?

A Well, we agreed this was the substance of what was discussed and what was agreed upon, and he couldn't sign this. He couldn't sign it because he was in registration and he would have to wait for some time on advice of counsel and I think he said two months or so after registration.

Q This letter of May 27th, 1969, do you recall whether you told Mr. Hutchins whether or not you agreed to the terms of that letter when you spoke to him on May 27th?

THE COURT: I think, Mr. Kushner, from here I would like to have the witness testify instead of being led.

MR. KUSHNER: All right.

THE COURT: Let's find out what this witness says.

MR. KUSHNER: All right, your Honor.

Q What did you discuss with Mr.Hutchins at your May 27th meeting about the substance of that letter of May 27th?

A All we agreed -- discussed and agreed that this is about what we had and down on paper what we had said

orally the last two times we met; that Amoskeag pay the five million dollars in some form, either cash or some of the Bangor Punta stock that we had or just straight cash; side agreement on a piece of property, Searsport, that they had under option. Explained to me also that they didn't own The Railroad 100 per cent, 98.7. Of course, it had to be subject to his board and our board. He would like to keep it as quiet as possible because of employee morale, and I disagreed with that, I told him I thought the morale would go up. He asked me to let him know later if I thought there should be some changes. I didn't think it was necessary and so told him at that time.

Is that what you want?

MR. KUSHNER: Your Honor, at this time I offer Exhibits 1 and 2 marked for identification in evidence.

THE COURT: I thought we had understood that all exhibits were deemed received in evidence and their materiality and relevancy would be determined at the close of the trial.

MR. RYAN: I have no objection.

MR. KUSHNER: With that understanding, your Honor, I will not make any more formal offers at this time.

THE COURT: Any exhibit which has been identified is assumed to be authentic and competent and its relevancy

and materiality will be determined at the close of the trial.

BY MR. KUSHNER:

Q Mr. Dumaine, did there come a time in June 1969 when you had a conversation with Mr. Hutchins about The Railroad?

A About what?

Q About The Railroad.

A There were numerous phone calls and once in a while he would drop into the office. But as far as I remember I wanted to look The Railroad over physically. We finally decided on when I could make a trip. You are talking now in May and June, I assume?

Q Yes. I show you Exhibit No. 3 marked for identification (handing).

Are you able to identify that exhibit?

A This June 16th, 1969 memorandum I wrote from my own records of the telephone conversation with Mr.Hutchins.

Q You prepared that memorandum?

A I think I dictated it to my secretary.

Q All right.

Do you know when you prepared it? When did you dictate it?

A Immediately after hanging up on the telephone.

Q And as best you can recall what was said by you and what was said by Mr. Hutchins during that phone conversation?

A Mr. Hutchins definitely said that we had a deal, they are in registration, that he had hoped they would be out of registration in some ten days. I didn't think that was possible so I made the memorandum "That's questionable"; that's my part of it. He told me he was informed by his lawyers that a definite commitment should not be made within two months of registration.

We agreed, he and I, that I should go over The Railroad with whomever of his staff I wanted, consider its physical condition, and in my -- my feeling was I would like to know something from him about each of his staff members and his president.

Q Let me ask you a final question about this phone conversation and the memorandum which is Exhibit No. 3 marked for identification.

You will note the last few words are "If and when we have a consummation date." Were those words which Mr. Hutchins said during the conversation?

THE COURT: Now, you see, you are leading again.

Q Well, what is the origin of those words?

A I put that down so that I would be prepared to

select the staff to run The Railroad. If we had a deal. It's been some three weeks since I have heard from him on a pretty important matter to us, I thought, and to him. So I am beginning to get a little shaky as to whether I had a deal.

Q So these were words --

A That was my summary of how I felt after that conversation.

Q Do you recall making an inspection trip of The Railroad some time in July 1969?

A Yes, sir.

MR. KUSHNER: Your Honor, if I am leading on that it is only because it is an agreed finding and I will stop immediately after the preliminary.

Q Do you recall how that came about, the inspection trip?

THE COURT: Just a moment. Let me see that Exhibit No. 2 again.

THE WITNESS: Yes, sir. (Handing.)

THE COURT: Thank you.

Read the last question to the witness so that he knows where we left off, please.

(Question read.)

MR. KUSHNER: Let me withdraw the question because

I think it's already been answered previously.

Q Mr. Dumaine, how long did that railroad trip take?

A About three days.

Q Who went with you?

A Most of the staff and the president Jerry Stroud and my son Dudley Dumaine. And Wendell Reuss, a railroad analyst.

Q Did you have any discussions with anyone at Bangor Punta immediately after the trip on The Railroad?

A Yes, sir.

Q With whom?

A I met with some of the families of the staff and some of the directors, Gordon Robertson, Mr. Hutchins, a number of their directors.

Q Where did you meet with Mr. Robertson and Mr. Hutchins?

A I think on our return from the trip it was at the country club in Bangor for a dinner.

Q Do you recall anything that you said to Mr.Robertson or Mr. Hutchins at that time and anything they said to you about the Railroad?

THE COURT: Will you fix the date on that?

Q Do you have the date of that?

A Around the--

THE COURT: What were the three days involved in the inspection trip? What three days--

MR. KUSHNER: Your Honor, the agreed finding states that it occurred during the week of July 21st. It is one of Mr. Ryan's agreed findings.

THE COURT: All right. July 21st week.

Now when was this dinner?

THE WITNESS: I think it was the 25th, wasn't it?

MR. KUSHNER: May I have this marked for identification, your Honor. I will show you something which may refresh your recollection.

xx (SEC Exhibit No. 4 marked for identification.)

Q I show you Exhibit No. 4 marked for identification and ask you if that refreshes your recollection as to when you met with Mr. Robertson and Mr. Hutchins (handing).

A Thursday, July 24th. In Mr. Hutchins' writing. It was dinner at the country club that night.

Q Does that help you fix the dates of the trip on The Railroad?

A Naturally.

Q When were they?

A They were the three days-- closed up that day and three days prior.

Q As best --

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A That being the third day.

Q As best you can recall what did Mr. Hutchins say, wha did you say, what did Mr. Robertson say when you met them at the country club, only insofar as concerns the Railroad?

A Both of them asked me as to my opinion of the condition of the property and the equipment and I definitely said I was very pleased with what I saw. A lot of work to be done, but compared to a lot of other railroads that I knew about it was in pretty good shape.

Q And --

A The same conversation for both gentlemen.

Q What did they say?

A They were pleased.

Q Was anything said at this time about when there would be a closing on the Railroad?

MR. RYAN: Objection, your Honor. He is leading the witness.

THE COURT: Sustained.

MR. RYAN: Please.

THE COURT: What else did you talk about in relation to the Railroad?

THE WITNESS: A good deal about the employees, sir.

THE COURT: What else? What other subjects?

THE WITNESS: Traffic.

THE COURT: What other subjects?

THE WITNESS: Traffic.

THE COURT: Yes. What else if anything?

THE WITNESS: Then it turned mostly into a social evening, sir.

MR. KUSHNER: May I have this marked as Exhibit No. 5 for identification, please.

(SEC Exhibit 5 marked for identification.)

Q Mr. Dumaine, are you able to identify Exhibit No.5 marked for identification (handing)?

A I identify this exhibit as a special meeting of the directors, August 28th, 1969, at 10:30 in the morning, of Amoskeag, signed by the secretary. Yes, I do.

Q Do you recall making any report to that meeting of the Amoskeag directors about the Railroad?

A I did.

Q And as best you recall what was the substance of what you said?

A Well, in the exhibit there was a vote of the board.

MR. RYAN: Your Honor, is the witness reading from the exhibit or is he testifying as to what his recollection is?

THE COURT: Mr. Dumaine, the lawyer wants to know, Mr. Kushner wants to know, what did you tell the board before they voted?

THE WITNESS: I reported about the trip, condition of the Railroad. I reported also my conversations with the president of the Maine Central. And I recommended that they go through with the agreement that I thought we had, and got a firm proposition from the board and a vote in this exhibit giving me the right to go through with the five million dollar offer.

THE COURT: Prior to that time did anybody give you the right to go through with anything?

THE WITNESS: Almost, your Honor, if I may --

THE COURT: Almost is not the same as yes or no.

THE WITNESS: I usually make the decisions, yes, sir.

THE COURT: You mean it was a one-man board?

THE WITNESS: Not always, no. I always looked to my board but they expect me to do what is right. I make the decision. They ratify. They have only disagreed with me once in my history.

THE COURT: You testified a moment ago that you got a firm right to go forward.

THE WITNESS: That's right.

THE COURT: Did you have such a firm right prior to that vote?

THE WITNESS: Having reported to the exec committee-- I have forgotten the date, the exhibits there -- I thought that was enough authority.

THE COURT: This is August 28th?

THE WITNESS: No. This was May 20th.

MR. LIMAN: Your Honor, that is Exhibit No. 1,I believe.

THE WITNESS: 20th of May (handing).

THE COURT: All right.

Off the record.

(Discussion off the record.)

THE COURT: On the record.

BY MR. KUSHNER:

Q Mr. Dumaine,are you able to identify Plaintiff's Exhibit No. 6 and 7 marked for identification (handing)?

A I identify Curtis Hutchins'Bangor,Maine's letter of September 2nd, 1969 signed by him and addressed to me, yes, sir.

Q Do you recall receiving that letter?

A I do.

Q That is Exhibit No. 6 marked for identification?

A Right.

Q How about Exhibit No. 7 marked for identification?

A This is a memorandum on Dead River Company, Bangor, Maine paper dated August 21st, 1969, from Mr. Curtis Hutchins, Status of a Tax Study of the Bangor & Aroostook.

Yes, sir, I do identify it.

Q You will note there is another document attached --

MR. RYAN: Your Honor, the witness identifies them. Is he --

MR. KUSHNER: I will ask him in a moment. Let's just clear up the fact that Exhibit No. 7 marked for identification contains two documents.

Q You recognize a second document?

A I do.

Q Do ycu recall whether or not you received Exhibit No. 7 marked for identification?

A I did --

Q Or copies thereof?

MR. RYAN: Excuse me, your Honor. He said he received Exhibit No. 7 but then he seemed to hold up Exhibit 6 in his hand.

MR. KUSHNER: He said it came with this letter, pointing to Exhibit 6.

A This letter --

MR. RYAN: You received both documents?

THE WITNESS: The same way.

Q Areyou able to identify Exhibit No. 8 marked for identification (handing)?

A Curtis Hutchins Bangor, Maine, September 3rd, 1969, addressed to our chief office clerk--

MR. RYAN: Your Honor, the question was did he recall receiving it.

THE COURT: No, can he identify it was the question.

THE WITNESS: I am identifying what I have in my hand.

A -- addressed to Tom Casey and signed by Curtis Hutchins.

Q Do you recall receiving that? Do you recall receiving that letter?

A Well, this was addressed to Tom Casey and he gave it to me on my return, yes, sir.

Q Your return from where?

A Well, I was out of the office, I think I was fishing.

Q Do you recall about when you returned?

A Oh, shortly after the 3rd, yes.

Q You will note that the letter requests to have your -- well, rather than summarize, let me read you the

last paragraph: "It occurred to" --

THE COURT: Why don't you just ask him simply what if anything did you do about the letter.

Q What if anything did you do in response to this letter, which is --

A I phoned Curtis Hutchins on the 9th -- on the 8th day of September.

Q And what did you say to Mr. Hutchins and what did he say to you?

A Tried to lay out a time schedule for closing. I had to trustee the ownership we had in Maine Central stock, and had hoped we could close at the end of their fiscal year, which was September 30th. So at least by the 1st of October we would have the thing finished with.

Q Did you get a time schedule with Mr. Hutchins? Did you get a time schedule with him?

A He agreed--

MR. RYAN: Objection, your Honor, he is leading the witness again.

THE COURT: All right, bear in mind that part of what we are doing here is for me to evaluate who is testifying. So go right ahead.

Q Mr. Dumaine, whose handwriting is on that letter which is Exhibit --

A It is mine.

Q -- Exhibit 8 marked for identification?

A It is my pencil. My notes.

MR. KUSHNER: Your Honor, I want to make sure that the notes are legible. They are not in evidence. At the same time the witness won't be here when I offer the exhibit in evidence.

MR. LIMAN: I understood everything is offered subject to an objection as to relevancy, materiality and competency.

THE COURT: I thought I made it perfectly clear. If you want me to repeat it I will repeat it. All exhibits are in evidence. Their authenticity and competency having been conceded by all parties. The only issue is their relevancy and materiality which will be determined at the close of the trial in connection with the determination of the case.

Is that clear?

MR. KUSHNER: Yes, sir.

Q Mr. Dumaine, can you please read your notes on that letter?

A "Phoned Hutch 9-8 re time schedule, trusteeship -- trustee. 9-29. purchase 10-1-69" and my initial at the bottom "D."

Q What does trustee refer to?

A I didn't hear.

Q Is that word "trustee" that you read?

A That's right, trustee.

THE COURT: He wants to know what it means.

Q What does that mean?

THE WITNESS: Sir?

THE COURT: He wants to know what it means.

A Oh, it means that we had to trustee the Maine Central stock that Amoskeag owned which we were prepared to do and had arranged with the Irving Trust Company to do so prior to making the final purchase of Bangor & Aroostook Railroad.

This is a thing the ICC insists on, have for a great number of years. No one company can own two railroads without their permission.

Q This letter, Exhibit 8 marked for identification, talks about financing arrangements.

Did you ever discuss that with Mr. Hutchins?

MR. RYAN: Objection, your Honor. He is again leading the witness. At least he should fix the time.

THE COURT: Overruled.

MR. KUSHNER: I will.

THE COURT: Did you talk to Mr.Hutchins on that

subject?

THE WITNESS: Yes, sir.

Q When?

THE COURT: When, and what happened?

THE WITNESS: I will repeat. I phoned Mr.Hutchins on the 8th day of September and discussed with him the time schedule.

Q Well, I am asking about the financing arrangements in this letter.

A Well, while I was away a lot of discussion was being held by the Bangor people and some with ours. As to a change in the kind of a contract different than what I thought we had agreed on. The agreement wasbuy the Railroad stock from Bangor Punta for five million dollars or on some such terms that equalled five million dollars basically.

Some time in August they got a change of heart and they wanted to change the deal to an asset sale and an asset purchase by us. And a lot of discussion was made, a lot of studies were made as to the tax consequences of the two deals.

Q Do you recall--

THE COURT: Who made the tax studies?

THE WITNESS: Bangor Punta made the tax studies, submitted some papers to us. I had our auditors and our tax

people and interstate commerce people and our railroad analyst all review their studies.

Q Does Exhibit No. 7 marked for identification have any connection with what you have just been talking about (handing)?

A Yes.

Q What?

A Do I have to identify this again?

Q No, sir.No, sir.

A Yes, it does. part of their studies.

Q That refers to Bangor Punta's studies?

A Yes, sir.

Q Do you recall having discussions with Mr.Hutchins about this assets subject?

A Yes.

Q And doyou recall when those discussions occurred?

A Especially with me in September when I got back from my trip.

Q Do you recall how many such discussions there were between you and Mr. Hutchins?

A Well, it had to be more than one. I would say three or four.

Q Can you fix approximate times; early September, mid-September?

A Mid-September.

Q Can you state in substance what you said and what Mr. Hutchins said?

A The auditors and tax people having reported to me that it was not to Amoskeag's best interest to change the deal, I had Arthur Young's men come to the office and explain their side to Mr. Hutchins. I asked him, "Hutch, would you -- if you were running Amoskeag,would you change the deal and I was running Bangor?"

He said, "No."

I said, "Well, you can't expect me to change the deal."

That's the substance.

THE COURT: Was this before or after the time-table was fixed?

THE WITNESS: It was after September 8th, sir.

THE COURT: In the memorandum that Mr.Kushner gave you where you wrote on it the words "Trustee"?

THE WITNESS: Yes, sir.

THE COURT: You explained that word. You also wrote the word "purchase October 1-69" but you didn't explain what that reference was.

THE WITNESS: That was the date I thought would be most convenient for all to complete the purchase.

Q Of what?

A October 10th -- 1st.

Q Purchase of what?

A The Bangor and Aroostook stock.

Q Are you able to identify the signatures on Exhibit 9 marked for identification (handing)?

I am referring to page 20.

A Yes, sir.

Q Please do. Whose signatures?

A Under Bangor Punta by Gordon Robertson, Chairman, and by myself under Amoskeag, F.C. Dumaine, Jr., President.

Q Do you recall when you signed this exhibit?

A This was all on the second day of October, about five or six o'clock at night.

Q Can you identify Exhibits 9 and 10 and 11 marked for identification (handing)?

A Exhibit 9 is agreement between Bangor Punta and Amoskeag dated October 2nd, 1969. I do.

10, item 10 is agreement, memorandum made out as if it was to be signed by Bangor and Amoskeag, and its reference-- let's see the agreement is pertaining to the sale agreement of October 2nd; yes, I do.

Q And Exhibit No. 11 marked for identification; do you recall if you did sign the original of Exhibit 10 for

identification?

A Well, I signed 11.

Q Are these exhibits, 9, 10 and 11 marked for identification the final agreements for the Railroad purchase by Amoskeag?

A Yes.

Q Incidentally, there is a reference in Exhibit No. 10 marked for identification to Sears Island.

What is the present status of that island?

MR. RYAN: Objection, your Honor, as to relevancy.

A Sears Island is a piece of property in Sears Harbor, Maine, off the coast of Maine, about a thousand acres of land. At that point on the shore the Bangor & Aroostook serves the oil distributing center and the Sprague Distributing and our own dock.

Q What I would like--

A The present status, at the time of the purchase it was under option to buy by a company. That ran out last month. The Bangor Railroad made an option to lease the island for a big oil refinery and other things.

Q It gave an option?

A They have an option through May 1st of this year.

Q Referring to -- not to the Railroad but to the other party?

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A To the island.

MR. KUSHNER: May I have these marked for identification, please.

(SEC Exhibits 6,7,8,9, 10,11 marked for identification.)

(SEC Exhibits 12 through 19 marked for identification.)

Q Mr. Dumaine, can you tell me whether or not Exhibit 12 marked for identification is a copy of something you received (handing)?

A Exhibit 12 is dated May 12th, 1969, addressed to Mr. Hutchins in New York. It is signed by Jerry Stroud, President of the Railroad.

Yes, I do.

Q Did you receive a copy of that?

A Yes, sir.

Q From whom?

A Mr. Hutchins.

Q When?

A Why?

Q When? What date, if you can recall, Mr. Dumaine?

A Well, it was after May 12th. Soon after.

Q 1969?

A Yes, sir.

Q Are you able to identify Exhibit No. 13 marked for identification (handing)?

A Exhibit 13 is the Bangor & Aroostook Railroad Comparative Income Account for March 1969 compared to March 1968 and for the six months ending March 1969 and 1968.

Yes, sir.

Q Have you seen that exhibit before?

A Yes, sir.

Q Or a copy thereof?

A Yes.

Q When?

A Sir?

Q When?

A I think it was sent along with the numerous other reports that we had that you have just shown me.

Q Are you referring to Exhibit 12 marked for identification (handing)?

A I think so, yes.

Q Sent along by whom? By whom was it sent?

A Mr. Hutchins had it sent to me. I think the staff probably made it up and mailed it.

Q Are you able to identify Exhibit No. 14 marked for identification? (Handing.)

A This is a Dead River Company report dated May 22,

1969. A complete list of the board of directors of the Bangor & Aroostook Railroad and their companies and so forth that they are associated with.

Q Have you seen that exhibit before?

A Yes, sir, I asked for it.

Q When did you ask for it?

A I think I asked for it about May 15th when these other papers all came in about the same time, Mr. Kushner.

Q Referring to Exhibits 12 and 13 marked for identification?

A Yes, all came about the same time.

Q Who sent you Exhibit No. 14 marked for identification?

A I asked Mr.Hutchins for it and he had it sent. He might have sent it himself or he might have had it sent from his office or from the Bangor & Aroostook office. But the Dead River office is the one headed on-- a letterhead of Dead River.

Q Are you able to identify Exhibit 15 marked for identification?

A It is dated September 4th, 1969, a memorandum from my top office man Tom Casey, T.H. Casey, addressed to me.

Q Did you receive that memorandum?

A Yes, sir, I did receive it, naturally.

Q Do you know whether Mr. Casey prepared this memorandum in the regular course of business of Amoskeag?

A Yes, sir.

Q Do you know whether it was the regular course of business of Amoskeag for him to prepare such memoranda?

A Yes, sir.

Q Your answer to both questions is yes?

A He has to prepare them and he was assigned to it.

Q Are you able to identify Exhibit 16 marked for identification? (Handing.)

A This is a confidential memorandum prepared by counsel for possible use in litigation addressed to me.

Q Which counsel prepared it?

A This was a-- prepared by John Davidson of St.Louis, one of our ICC counsel, and in conjunction with Mr.Cole's office they prepared this-- isn't that right?

Q Do you recall when you received that memorandum?

A THis is during September, I haven't the slightest idea of the date during September, but it was pertaining to all their changing of the original agreement.

Q Do you recall reading that memorandum in September of 1969?

A Yes, sir.

Q And do you recall what if anyth ng you did as a

result of reading it?

A Well, this is only part of one of the reports of what I expected from numerous people; Mr. Reuss was to give a report.

Q Are you able to identify Exhibit 17 marked for identification? (Handing.)

A I do.

Q What is that?

A September 17th from Wendell Reuss, questions to be asked about Bangor & Aroostook acquisition via assets versus or stock purchase. Yes, sir.

Q Is that the memorandum on Mr. Reuss that you were referring to a few moments ago?

A Yes, sir.

Q Do you recall when you received it?

A About---had to be right after the 8th -- 17th of September. Probably was that day. I think he was in Boston, brought it with him.

Q Do you recall whether or not you relied on these memoranda, Exhibits 16 and 17 for identification?

MR. RYAN: Objection, your Honor.

MR. KUSHNER: I will withdraw the question.

Q What if anything did you do as a result of reading these memoranda?

A Did I do?

Q Yes.

A I prepared myself and my company's affairs so that I could insist on getting the common stock of Bangor & Aroostook Railroad and take such steps as was necessary under ICC and other government agencies to carry out my agreement to buy this property.

Q Do you recall receiving the original of Exhibit No. 18 marked for identification (handing)?

A Dated September 15, 1969 addressed to me and signed by Curtis Hutchins. I do identify it.

Q Do you recall receiving that letter from Mr. Hutchins?

A Yes, sir.

Q Do you recall whether you received the letter shortly after the date on the letter?

A Yes, sir.

Q Are you able to identify Exhibit No. 19 for identification? (Handing.)

A This is on the letterhead of Greenfield, Davidson & Mandelstann, St. Louis, dated September 19, addressed to Amoskeag, attention to myself, and signed by John Davidson, Jr., copy to Mr. Cole.

Yes, sir.

Q Do you recall whether you received that letter, Exhibit No. 19, shortly after the date of the letter?

A Yes, sir.

Q And you did? You did?

A I did, yes, sir.

MR. KUSHNER: Excuse me for a moment, your Honor. I have no further questions.

THE COURT: All right, we will take a short recess.

(Recess)

CROSS-EXAMINATION

BY MR. LIMAN:

Q Mr. Dumaine, I direct your attention to Exhibit No. 2, which is the May 27, 1969 letter (handing).

On Mr. Kushner's examination you testified that when Mr. Hutchins gave you this he said that the deal was subject to the approval of the Bangor board, is that correct?

A Yes, sir.

Q Did Mr. Hutchins tell you anything about the attitude of the Bangor Punta board toward this deal?

A Well, it was a surprise to me that he had been selected to negotiate --

Q Well, what did he say to you?

MR. RYAN: Objection to that.

A He said to me that he had been authorized to negotiate with me. That was a surprise.

Q Did he say anything to you concerning the attitude of the individual members of the board concerning a sale of the railroad at $5 million?

A The attitude of the board was they felt --

MR. RYAN: Objection, your Honor. Is he testifying as to what Mr. Hutchins said or --

Q What did Mr. Hutchins say?

A Mr. Hutchins said that the board took it out of Mr. Salgo's hands, I had negotiated with Salgo, as you know, many months and years, and that he was to negotiate with me for a possible selling of this property.

Q And you said that you had negotiated with Mr. Salgo. Was that in the past?

A Yes.

Q And had you been able to reach terms with Mr. Salgo?

A Nothing definite.

Q When did Mr. Hutchins tell you that the board had taken it out of Mr. Salgo's hands?

A He may have intimated it on the phone, but when we made the date on May 12 for lunch was the first

he told me directly. I understood it was wholly in his hands.

Q Did he tell you why they took it out of Mr. Salgo's hands?

A They had had a dispute as to how it ought to be handled. Who should handle it.

Q And that they had authorized him, Mr. Hutchins--

MR. RYAN: Objection, your Honor. He is leading the witness.

THE COURT: I am not unaware of who is testifying when these things occur, so you needn't --

MR. RYAN: All right, your Honor.

THE COURT: -- worry about that. I will accept the answers of counsel as counsel's answers whenever counsel puts the answer.

MR. RYAN: Thank you, your Honor.

THE COURT: Go ahead.

Q Did he tell you anything else concerning where the board stood on this deal?

MR. RYAN: Fix the time, please.

Q On or before June 16, 1969. In these conversations you had in May and up through June 16.

A Well, I think I have already testified that it had to be subject to board approval. His attorneys

had told him that they shouldn't make any definite deal until they had gotten out of registration. Well, I knew the problems of SEC for any management, they are voluminous and have difficulty. And so I realized that we just have to wait.

Q Fine.

MR. LIMAN: Fine. Thank you.

CROSS-EXAMINATION

BY MR. RYAN:

Q Mr. Hutchins, you testified on your examination that you called Mr. Hutchinsand arranged to meet him --

THE COURT: Read that back to him, please.

(Record read)

MR. RYAN: Excuse me. Mr. Dumaine.

Q Mr. Dumaine, you testified on your direct examination that you called Mr. Hutchins and arranged to meet him on May 12, is that correct?

A Yes, sir.

Q Now, you also testified, Mr. Dumaine, that during the course of the conversations on May 12 Mr. Hutchins told you that he had full authority to make an agreement on behalf of Bangor Punta to sell the Bangor and Aroostook. Do you recall that testimony?

A Yes, sir.

Q Is that testimony correct?

A I am sure it is.

Q You are certain of that?

A Yes, sir.

Q Then you testified that you had a subsequent meeting on May 15, probably three days later, with Mr. Hutchins, is that correct?

A Yes, sir.

Q Now, during the course of the discussions at May 15 was there any discussion at all concerning Mr. Hutchins' authority to act on behalf of Bangor Punta regarding the Bangor and Aroostook?

A There was no other feeling on that day than there was on the 12th.

Q Well, you say "feeling." There was nothing--

A There was no change at all.

Q No statement that his authority had changed?

A No, sir.

Q Then you testified, Mr. Dumaine, that you had some conversations with Mr. Hutchins after you received Exhibit No. 2, which is the May 27 letter (handing)?

A Yes.

Q Now, during the course of these conversations with Mr. Hutchins concerning the May 27 letter was there

any discussion at all concerning Mr. Hutchins' authority to enter into an agreement binding Bangor Punta to sell its Bangor and Aroostook stock?

A Pretty long question.

Q Do you wish the question read back?

A I didn't understand his authority had changed at all.

Q I asked you whether there was any discussion concerning what his authority was.

A He did not intimate there had been any change in his authority.

Q And so that as of this discussion concerning the May 27 letter you still were under the impression that Mr. Hutchins' statement to you on May 12 that he had full authority to bind Bangor Punta to sell the BAR stock was still in existence, is that correct?

A Yes, sir.

Q Do you recall, Mr. Dumaine, Mr. Ackell of Chris-Craft taking your deposition in this matter on March 9, 1970 in Boston?

A Yes.

Q And do you recall being asked these questions and giving these answers, and they appear on page 37. There is no line number to it, but it will start at the

first question on page 37 and continue to the top of page 39. Do you recall being asked these questions and giving these answers:

"Q When was the next meeting with Mr. Hutchins concerning the B &A ?

"A It wasn't so long after the first one, a few days."

So we are talking about the May 15 meeting.

"Q Mr. Hutchins came back to Boston?

"A Yes, I think it was Boston. Yes. I didn't go to New York. We met anyway.

"Q How was that meeting arranged?

"A On the same terms.

"Q Did you call the meeting or did he?

"A It was arranged that we would get together shortly to see if we couldn't come to a meeting of the minds.

"Q How was the earlier meeting left with Mr. Hutchins? Was anybody to do anything?

"A He had to go back and talk to his board and his officers. I think there was a great deal of disagreement amongst themselves."

MR. KUSHNER: Your Honor, the word is "good deal."

MR. RYAN: Good deal. Excuse me.

Q "Q Now he came back a few days later to Boston, is that correct?

"A Yes, I think it was Boston.

"Q What did he tell you about what had transpired in the interim period?

"A He just said there was the usual confusion at Bangor Punta as far as selling their railroad for such a low price and they weren't wholly in accord.

"Q Was he talking about a sale of assets of stock?

"A Stock.

"Q Did he report to you what happened in his discussions with any of the officers?

"A Yes, generally.

"Q What did he say?

"A I just told you.

"Q That there was a disagreement?

"A Yes.

"Q Did he indicate that he had discussed the matter with the Bangor Punta board of directors?

"A You mean in a joint board meeting? You mean in a regular call meeting?

"Q Any kind of meeting.

"A I wouldn't know that. I know he talked to numerous members, that is what they would normally do outside of the meeting.

"Q I am asking what he told you.

"A He just told me there was a good deal of discussion that he was negotiating for the board and for the company but all subject to the final approval of the board and of the problems he was having with some of them, one of them was my friend Nick."

Do you recall being asked those questions and giving those answers?

A Yes, sir.

Q Were those answers true at that time?

A Sure.

Q Now I direct your attention again to the same deposition and beginning on page 47 --

THE COURT: May I inquire?

MR. RYAN: Excuse me.

THE COURT: If they were true then are they his testimony now?

Q You say they were true then, is that your testimony now?

A Yes, sir.

Q On top of page 47, and I will continue on

through portions of page 49. Do you recall being asked these questions and giving these answers on March 9, 1970 when being examined by Mr. Ackell:

"Q I show you Chris-Craft Exhibit 54, which is a copy of a letter from Bangor Punta Corporation dated May 27, 1969 addressed to you and indicating that it was signed by Curtis M. Hutchins, and I ask you to read that, please.

"A I got this but it wasn't signed."

Then it's recessed.

"Q Back on the record, Mr. Dumaine. Have you read Exhibit 54 for identification?

"A Yes, sir.

"Q Do you recall ever seeing the original of this exhibit? I will show you what I have got. Doyou recall here today having received such a letter from Bangor Punta?

"A Yes.

"Q Did you mean thatit had not been signed when you received it?

"A Yes, sir, he definitely stated it's not signed but this is what we think we can do."

It's blurred out --

MR. LIMAN: "It's not signed, this is what

we can do."

Q "It's not signed, this is what we think we can do.

"Q Mr. Hutchins stated it wasn't signed?

"A That is why he handed me to read his letter enclosing it.

"Q The Exhibit 54 letter, did you receive this in the mail or was it handed to you by Mr. Hutchins?

"A I can't tell you whether he handed it to me or it came in the mail.

"Q Did you discuss such a letter with Mr. Hutchins before you received it?

"A Before, yes.

"Q Before he wrote it?

"A Probably.

"Q Before he wrote it?

"A Yes.

"Q What did you and Mr. Hutchins say about the letter?"

THE COURT: "Such letter."

Q "About such letter.

"A It was all in that first meeting we had when I told him what I thought we could do.

"Q Did you discuss with Mr. Hutchins sending

such a letter but without a signature?

"A I didn't discuss it. He told me.

"Q What did he tell you about this letter?

"A It was just a memorandum of what he thought I had meant in my offer and he said there is a dispute here and I can't sign it, I haven't got authority to. They haven't accepted, the company hasn't accepted it.

"Q What do you understand Mr. Hutchins to mean in saying in the first paragraph 'I understand you and I have agreed,' I am leaving out some of the close quote 'on the sale of Amoskeag of all the Bangor and Aroostook Railroad stock."

There is an objection.

"The Witness: He couldn't sell it all anyway because he didn't have it all.

"Q What did you understand when you read this letter? Was it your -- what was your understanding of him saying that you and he had agreed?

"A All I am saying is all he was saying was subject to the board's approval and company acceptance on both sides. This was the kind of thing that I would propose, that our people would never pay five million for the stock that they owned.

"Q Now, I am asking you whether Mr. Hutchins had

agreed to a transaction on the terms indicated in this letter.

"A He agreed to transport the information back to his people."

Do you recall being asked those questions and giving those answers?

A I do.

Q Were those answers true?

A Yes.

Q Are those answers your testimony today?

A Yes.

Q And your testimony still is that Mr. Hutchins told you he had full authority to enter into an agreement on behalf of Bangor Punta Corporation?

A Of course. What are you getting at?

Q The answer is "of course"? Now,you testified, Mr. Dumaine, that at this May 15 meeting Mr. Hutchins told you that he could not enter into a -- Bangor Punta could not enter into an agreement to sell the Bangor and Aroostook at thattime because Bangor Punta was in registration and its attorneys told him that he could not enter into an agreement until two months after he got out of registration, is that correct?

A Yes, sir.

Q And that was told to you on May 15?

A Yes, sir.

Q There is no question in your mind?

A No question in my mind.

Q And you then testified thatyou had a subsequent conversation with Mr. Hutchins over the telephone which led up to your preparation of Exhibit 3 which is the memorandum of June 16 (handing,) is that correct?

A I have testified to that.

Q And this conversation you had on June 16 as recorded in the memorandum was the exact same conversation which you testified you had with Mr. Hutchins on May 15?

A That's right.

Q Is that correct? Was that the answer?

A I don't know about May 15. I didn't hear -- understand what you said. You are trying to mix this up.

MR. RYAN: Read the question back.

A Let me give you some information, please.

THE COURT: Mr. Dumaine,the stenographer will read the question to you.

(Question read)

A Can I have the May 15th testimony?

Q Well, you just testified just a moment ago,

Mr. Dumaine, that you recall having a conversation with Mr. Hutchins on May 15 in which he told you that he had been advised by Bangor Punta's attorneys that Bangor Punta was unable to enter into an agreement to sell the Bangor and Aroostook stock to you because they were in registration and had to wait until they were out of registration for two months before they could enter into the agreement.

Do you recall giving that testimony here not an hour and a half ago?

A So that makes it correct, doesn't it?

THE COURT: He wants to know do you remember so testifying?

THE WITNESS: Yes, sir.

Q All right.

Now, you then had a subsequent --

THE COURT: Just off the record.

(Discussion off the record)

THE WITNESS: What I am trying to say is --

THE COURT: No, no, Mr. Dumaine, let the lawyer ask you the questions. You can lecture him later.

THE WITNESS: All right, thank you.

Q So, Mr. Dumaine, then you had a conversation with Mr. Hutchins on May 15 which was substantially the same conversation which you testified you had on June 16?

A Correct.

Q So the same conversation you had on two occasions?

A Correct. And the reason for it was, if you would like to get the reason, three weeks had gone by and I hadn't heard anything from him.

Q Three weeks had gone by when, Mr. Dumaine?

A From May to June.

Q Mr. Dumaine, you testified that you went to your board -- the executive committee of the board -- yes, you went to your executive committee on May 20 and discussed with them the discussions you were having with Mr. Hutchins at that time.

Did you advise your board, or tell your board that Mr. Hutchins had agreed to sell the Bangor and Aroostook stock on behalf of Bangor Punta to Amoskeag?

A Yes.

Q You told the board that?

A Yes, sir.

Q Mr. Dumaine, do you recall being asked these questions and giving these answers on March 9, 1970 at your deposition by Mr. Ackell? I am going to read from page 55:

"Q Well, did you, after receiving this May 27

letter and discussing with Mr. Hutchins, did you seek Amoskeag's board approval for the transaction?

"A I told you yes.

"Q What I mean was that after receiving this letter you obtained that approval?

"A Just when the next meeting came and I told you I think that before I talked to some of the directors.

"Q Now, did you feel that you had an agreement at this time?

"A I said I was obligated, I had obligated the company to pay five million when and if I could get them to agree and they were willing to take it.

"Q Did you tell your board at this time that they had not indicated they were willing to take it?

"A Well, knowing Nick Salgo there was no doubt about it."

Now, do you recall being asked those questions and giving those answers?

A Yes, sir.

Q Were those answers true at the time you made them?

A Yes, sir.

Q Is that your testimony today?

A Still.

Q It is still your testimony?

A Yes. You are getting it all wrong, but it's all right. You are putting the emphasis on the wrong thing. Mr. Hutchins gave me his word. Told me he couldn't under the rules. And he reconfirmed it on the 16th. I told my board that we'd have to wait.

THE COURT: Wait for what?

THE WITNESS: Wait for the time on the registration to run out, sir.

THE COURT: You mean wait for an agreement?

THE WITNESS: I had an agreement man to man with Mr. Hutchins.

THE COURT: You got a letter on May -- this unsigned letter on May 27, did you not?

THE WITNESS: Yes, sir.

THE COURT: Did you ever answer it?

THE WITNESS: I thanked him for it, yes.

THE COURT: Did you ever tell him that anything stated in that letter was incorrect?

THE WITNESS: No, sir.

THE COURT: Did it express correctly what you and he understood at the time?

THE WITNESS: Yes, sir.

THE COURT: Now, that letter says that each

of you was engaged solely in a tentative exploration, didn't it?

THE WITNESS: Yes, tentative, but they would go through with it when the time came.

THE COURT: Well, tentative and go through are not the same thing in your business mind, are they?

THE WITNESS: When a man gives me his word it is.

THE COURT: Was it correct that you were told that the only authority that Hutchins had and the assumption that he was making was that the only authority that you had was to make a tentative exploration?

THE WITNESS: He said he would make the sale. I said I would make the purchase. But it had to be tentative until the time ran out.

THE COURT: Was it a tentative exploration or a tentative agreement?

THE WITNESS: It was a definite agreement but delayed to some future date so we would be ready when the time came, yes, sir.

THE COURT: It was not merely to be a tentative exploration?

THE WITNESS: Oh, no, sir. I was completely

obligated for $5 million.

THE COURT: All right. Now look at the letter, in the third paragraph, and explain it to me.

THE WITNESS: Yes, sir.

THE COURT: What does it say? Read it out loud.

THE WITNESS: You mean starting "The railroad"?

THE COURT: No, the next paragraph.

THE WITNESS: "Although I have general authority from the Bangor and Punta board to make tentative exploration regarding the sale of the railroad, any understanding between me and you is subject to board's approval."

That's right. That is what he wrote. When we shook hands with the deal --

THE COURT: What does it say then? What's the next thing he says?

THE WITNESS: Excuse me. This is right. This is what he wrote.

THE COURT: What else does it say?

THE WITNESS: "I expect you may want the same understanding regarding the Amoskeag board."

THE COURT: Did that paragraph express what

you and Mr. Hutchins were saying to each other at that time?

THE WITNESS: I think this is what we both would do in due respect to our boards and due respect to theproblems they had before the SEC in registration, yes, sir, I think this is the thing, but as far as he and I were concerned we had an agreement to finish this thing up sometime after that registration was completed. The date wasn't known.

THE COURT: Are you telling me that you had an agreement that was the same as or different than what is contained in that paragraph?

THE WITNESS: I think at that time we could assume we had nothing but a tentative agreement, but there was no doubt in either of our minds we would go through with it.

THE COURT: Now I am asking you whether that paragraph which says that the only authority that either of you had was to explore and not to agree whether that correctly expressed the state of the minds of Mr. Hutchins and yourself at that time.

MR. KUSHNER: Your Honor, may I record my objection to the question? I don't think it's an accurate interpretation of that paragraph.

THE COURT: Yes. Your objection is noted. The lawyer objects to my question, Mr. Dumaine.

A I have made worse mistakes. I think this was written by a lawyer. I think this was the way he wanted to put it on paper but we knew what each meant. That's all there is to it.

THE COURT: Haven't you told me that letter correctly expressed what you and Mr. Hutchins were saying?

THE WITNESS: That we knew we would have to go through a delay period, yes, sir, and that makes it tentative. But we had a definite agreement.

THE COURT: All right, go ahead, Mr. Ryan.

BY MR. RYAN:

Q Do you recall, Mr. Dumaine, your deposition again on March 9, 1970 on page 46 when Mr. Ackell asked you these questions --

A Louder, please.

Q Excuse me.

March 9, 1970, when Mr. Ackell asked you these questions and you gave these answers:

"Q Now, did there come a time"--

MR. KUSHNER: May we have the page number?

MR. RYAN: Excuse me, 46.

MR. KUSHNER: Thank you.

Q "Now, did there come a time when you reached agreement on the terms of the Amoskeag purchase of B & A?

"A Yes.

"Q Do you recall when that was?

"A Yes.

"Q When?

"A October 2, 1969.

"Q Did there come a time before October when you reached agreement with Mr. Hutchins on the terms?

"A Sure, he knew what I would pay but he hadn't got complete okay from the board except he told me he was in charge of negotiations. I said, well, this is what I will do. He said numerous times, I think we have got a deal, but."

Do you recall being asked those questions and giving those answers?

A Yes.

Q Were those answers true when you gave them?

A Yes.

Q Are those answers true today?

A They were as of that day.

Q Are they true today?

A They haven't changed.

Q And that is your testimony today?

A That's right.

THE COURT: What page is that?

MR. RYAN: That's page 46, your Honor, it starts about -- it's the second question on the page. There is no line number.

Q During your conversations in this period preceding June 16, 1969, the date which you made the memorandum which I think is Exhibit No. 3, I believe it is, do you recall having any conversations with Mr. Hutchins concerning discussions going on within Bangor Punta over the question of what should be done with the Bangor and Aroostook Railroad?

A They wanted it to be run like a railroad. Plenty of discussions on how a railroad ought to be run, of course.

Q Were there any discussions on whether -- any conversations with Mr. Hutchins concerning discussions going on within Bangor Punta concerning the possible disposition of the Bangor and Aroostook Railroad?

MR. LIMAN: What period are you referring to?

MR. RYAN: This is June 16. Prior to June 16.

Q From May 12 until June 16.

Well, did Mr. Hutchins ever tell you that there was a disagreement between Mr. Salgo and Mr. Hutchins over what should be done with the Bangor and Aroostook Railroad?

A Yes, he told me Mr. Salgo, who had been negotiating for years to get rid of the railroad, had been asked to step out and he, Hutchins, was asked to negotiate for the sale.

Q Did he tell you whether Mr. Salgo was in accord with the proposed sale of the Bangor and Aroostook Railroad?

A He told me that the board was in accord to sell the railroad. That Mr. Salgo wanted more money for it.

Q He told you that Mr. Salgo was in favor of selling the railroad?

A As I understood it. I have heard him say so himself.

Q And these were conversations which took place--

A Prior to May 12.

Q -- June 16?

A Yes.

Q You testified, Mr. Dumaine, that you again went back to your board on August 28 and again reconfirmed

your authority concerning the possible purchase of the Bangor and Aroostook stock from Bangor Punta, and you testified thatyou believed at that time that you had a firm agreement from Bangor Punta to sell the Bangor and Aroostook stock to you, is that correct?

A No, I didn't say that.

Q Well, what is your -- what was your understanding at that time?

A I said that Mr. Hutchins all through said that they would sell their railroad. That there was some misunderstanding or dispute amongst the board, and I wasn't there, as to the price. But that fact that he and most of the board wanted to sell the railroad and were willing to take the price, there came shortly around the 1st of September a study from Dead River, or somebody, about the taxability of the sale of the common stock of the Bangor and Aroostook Railroad. I testified to that, the exhibit is in.

Now, Mr. Hutchins didn't want to get caught any more than anybody else did in selling the stock for $5 million and having me take it and turn around and sell the assets the next day for $18 million. It would make him look very foolish, wouldn't it?

What they wanted to do is to sell this

railroad to a man that would run the railroad as a railroad. That was my whole intent. It never occurred to me that you could do such a thing.

Q The question was, Mr. Dumaine, did you understand when you reported to your board on August 28, 1969, did you understand on August 28, 1969 when you reported to your board that you had a firm agreement from Bangor Punta to sell the Bangor and Aroostook stock to you?

A You see the vote doesn't say that. It says I want authority to do that.

THE COURT: Mr. Dumaine, was it a reasonable possibility that a purchaser of the stock if he were so minded to do could have turned around and sold the assets for $18 million?

THE WITNESS: That was the fear, yes, sir.

THE COURT: And you thought that was a reasonable fear?

THE WITNESS: Well, if I was in the banking business in New York I would think that -- I would think that I would look kind of foolish if I sold an asset that could be turned around. You must understand, your Honor, that this company has something like $65 million of assets and only owed about 30.

THE COURT: Were the assets of the

railroad on a break up basis worth $18 million?

THE WITNESS: I think you could judge it for pretty close to that or more, yes, sir.

THE COURT: So you were getting a real bargain purchase at five --

THE WITNESS: I thought so.

BY MR. RYAN:

Q Well, Mr. Dumaine, at what point of time did you feel you had a firm agreement from Bangor Punta to sell you the Bangor and Aroostook stock?

A Knowing Mr. Salgo, I didn't have anything sure until I put the certified check under Mr. Robertson's nose on the second day of October. But I knew that Mr. Robertson and Mr. Curtis Hutchins having told me all through this period, I knew they were men of their word and the board would back them up in spite of anything.

Q So thatyou feel you didn't have your agreement then until October 2nd?

A I had his agreement but I didn't have it from Bangor.

Q You mean you had Curtis Hutchins' promise?

A That's right.

Q That he could deliver?

A Yes. I felt sure he could.

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MR. RYAN: I have no further questions, Mr. Dumaine.

THE COURT: Any redirect examination?

MR. KUSHNER: Yes, sir. Very short.

MR. ARNING: No questions, your Honor.

THE COURT: All right, go ahead, Mr. Kushner.

REDIRECT EXAMINATION

BY MR. KUSHNER:

Q Mr. Dumaine, did you testify in answer to Mr. Ryan that Mr. Hutchins told you that he and most of the board were willing to take the price?

A I am sure he said it to me.

Q What price are you referring to?

A The $5 million.

Q Do you recall when he said it to you?

A I think he told me that he had the assurance of the board as early as May.

Q Of 1969?

A Right. That is his and not Bangor and Aroostook -- Bangor Punta. Excuse me.

Q Now --

A He was speaking for the board.

Q You also gave some testimony to Mr. Ryan about Bangor Punta wanting, or Hutchins wanted someone who would

run the railroad. Is this something that Mr. Hutchins told you?

A I didn't understand that question.

Q Did you testify that Mr. Hutchins was seeking a buyer who would run the railroad, who would operate it?

A Yes, sir. I thought sure they were so many years Bangor and Aroostook, Mr. Hutchins and Mr. Robertson they wanted somebody that understood and loved railroading.

Q Did they tell you the reasons for this? For wanting to continue the railroad?

A Yes.

Q What were those reasons?

A Basically their interest in Maine. I mean the people of Maine of which he is a very deep part, and the whole board of directors are all State of Mainers except one or two. And they are all very interested in keeping that railroad open.

Q The board of directors you are talking about is Bangor Punta's?

A Bangor and Aroostook Railroad board.

Q The board of directors of Bangor and Aroostook is almost wholly Maine?

A Bangor and Aroostook Railroad is wholly in Maine and the board has only two or three outsiders not

counting myself.

Q Well, Mr. Dumaine, what I want to know is what were the reasons Hutchins and Robertson told you that they wanted to keep the railroad running?

A All their lives they have been working and earning their living, their families and the families in the Hutchins side before have been dependent on the success of the Bangor and Aroostook Railroad and its territory.

Q Incidentally, had Mr. Robertson been connected with the railroad before?

A Mr. Robertson was president of the railroad for a while.

Q And you mentioned, of course, that Mr. Hutchins was also?

A Before that, yes, sir.

Q Were you asked for any commitment that you would continue the railroad?

A Sir?

Q Were you asked for any commitment that you would continue to run the railroad?

A No, sir. They just knew my background I am afraid.

Q Did they ask you whether you would? Did

they ask you what your plans were for the railroad?

A I told -- yes, they did. We discussed going in with the Maine Central, probably the Boston Maine and numerous other New England railroads. They even had at one time a long discussion of reaching to Chicago with the Erie. It wasn't in the Maine thing because the Erie had pretty well committed to the Norfolk & Western system by then.

Q Were these discussions you had with whom?

A Hutchins. During this period I have told him my plans were still good for New England Railroad. I didn't know the Penn Central was going to bust up.

Q What period are you referring to now?

A Well, it started on this May 12 lunch --

Q 1969?

A 1969, how we could keep the railroad going and the savings that could be made if we had other mergers.

Q Did Hutchins tell you any reasons that Bangor Punta had for wanting to dispose of the railroad?

A Well, I don't know that he told me anything to that extent excepting that I knew that Mr. Salgo didn't like railroading, didn't like it as an investment in his portfolio.

MR. KUSHNER: Excuse me, your Honor, may I have just a moment? I have no further questions.

THE COURT: Anything else by anybody?

RECROSS-EXAMINATION

BY MR. ARNING:

Q I would like to direct your attention once more, Mr. Dumaine, to your testimony on the deposition before Mr. Ackell in Boston back in March. I am going to read some questions and answers from page 39, continuing from the point where Mr. Ryan left off in his examination, concerning your meeting on May 15 in Boston?

A Yes, sir.

Q "Q What did he say" -- he is Mr. Hutchins -- "about the problem he was having with Nick Salgo?

"A Nick couldn't agree to such a low price.

"Q This is what he said to you?

"A Approximately.

"Q Now, what happened at the second meeting, did you again discuss price?

"A He wanted me to change it, and I said no.

"Q Did he say by how much?

"A He kept saying, 'It's on the books for 18.'

"Q And what did you say?

"A I said 'All I have got is 5.'

"Q You stuck to your guns, in other words?

"A That is what happened. It was a hell of a long time getting a final yes."

Now, if I asked you those same questions today would you give the same answers?

A Yes, sir.

MR. ARNING: Thank you.

THE COURT: Mr. Dumaine --

THE WITNESS: Yes, your Honor.

THE COURT: Was the Amoskeag Corporation in 1969 a public corporation?

THE WITNESS: Amoskeag Company is an investment trust, its charter goes back 130, 140 years. The outcome of the old Amoskeag Mills in Manchester, New Hampshire, controlled J. P. McGuire, Fieldcrest Mills and numerous companies. I happen to be the head of it now.

THE COURT: Was it publicly owned in 1969?

THE WITNESS: Yes, sir.

THE COURT: And had public stockholders?

THE WITNESS: Yes, sir.

THE COURT: Was it subject to filings with the Securities and Exchange Commission?

THE WITNESS: Yes, sir.

THE COURT: And was subject to filings with the Interstate Commerce Commission?

THE WITNESS: No, sir.

THE COURT: I thought you said there was some interest with the Maine Central?

THE WITNESS: We didn't -- they considered it control but I don't think we had to file anything for such minority control because we didn't control the board.

THE COURT: At all events you did --you were registered with the Securities and Exchange Commission?

THE WITNESS: Under the Investment Company Act, yes, sir.

THE COURT: Now in connection with that registration did you file any notices of the transaction that you had with Bangor Punta?

THE WITNESS: My registration? I didn't have a registration. This is Bangor Punta's registration we have been talking about all the time.

THE COURT: I understand that. Amoskeag was also registered as an investment company?

THE WITNESS: Oh, yes.

THE COURT: Now there came a time when you had to file something with the Securities and Exchange

Commission about this deal, didn't there?

THE WITNESS: Came at the annual report that goes to SEC, yes, sir.

THE COURT: This was a material transaction for Amoskeag, was it not?

THE WITNESS: At that time it was about 5 per cent, not too much material and wasn't considered to have to file special.

THE COURT: Were you under any requirement to file monthly reports of material transactions?

THE WITNESS: No, sir. The only thing we had to file that were material with the SEC were any insider deals, purchase-sales of securities of Amoskeag by any director or any officer. Those are filed monthly.

THE COURT: When was the first notice that you gave on behalf of Amoskeag to the SEC of the transaction with Bangor Punta?

THE WITNESS: I am sure it wasn't done until our year end that year, which is December 31. As of December 31.

THE COURT: And in that filing did you outline the transaction that you had made with Bangor Punta?

THE WITNESS: As prescribed by SEC, yes, sir.

THE COURT: Did you give any information to

the SEC at that time as to the date when you had arrived at an understanding with Bangor Punta?

THE WITNESS: No, sir.

THE COURT: Have you a copy of the material that you filed at that time with the SEC?

THE WITNESS: Of course, in my office I have.

MR. LIMAN: We have one here, your Honor. It was attached to his deposition, I believe, and his deposition is on file.

THE COURT: Where would I find that?

MR. LIMAN: Do you have the deposition there, your Honor?

THE COURT: Yes.

MR. LIMAN: If you will turn toward the end where they have exhibits you will see Amoskeag Company -- you can match yours up with mine (handing).

THE COURT: Mr. Liman has called my attention to your report to stockholders for the year ended December 31, 1969 and to your letter of February 11, 1970 (handing).

THE WITNESS: That's the year end report for December 31, yes, sir.

THE COURT: Was that the first mention to the SEC of this transaction by Amoskeag?

THE WITNESS: I can't speak for my counsel, but as far as I am concerned it's the first time I knew I had to file and I did file.

THE COURT: There was no other filing on the transaction?

THE WITNESS: We filed semiannually with our stockholders June, end of June and end of December.

THE COURT: What I am getting at, gentlemen, is I don't know what the regulation requires but I wanted to find out whether there were any interim reports that were required to be filed in respect of a material transaction such as would be filed in the 8-Ks.

MR. LIMAN: I am told by their counsel, your Honor, that they do not have to file 8-Ks.

THE COURT: All right, well that clears up that particular part of it.

MR. KUSHNER: Your Honor, lest I be taken to assent or dissent, I don't know at this point so I can't state my agreement or disagreement.

THE COURT: Do you claim that they were delinquent in filing?

MR. KUSHNER: No, I claim nothing, your Honor. I would have to -- to find out the answer.

THE WITNESS: Can I volunteer something?

THE COURT: Mr. Dumaine wants to tell me something. Go ahead.

THE WITNESS: I had two of my counsel on ICC, Mr. Davidson and Mr. Battle from Virginia, they were going back and forth, I am sure they talked to the ICC, but I didn't have to file anything at that time.

THE COURT: Was there anything ever filed with the ICC in respect of this transaction?

THE WITNESS: No, sir.

THE COURT: All right. I have no further questions.

MR. LIMAN: Your Honor, if we are finished with the witness there was one --

MR. KUSHNER: Your Honor, may we mark the report that's been referred to? May we mark as an exhibit for identification the report that has been referred to?

THE COURT: The Amoskeag report to stockholders for the year ended December 31, 1969 will be marked as exhibit what?

THE CLERK: 20.

(SEC Exhibit 20 was marked for identification.)

THE COURT: All right, did you want anything

else?

MR. LIMAN: Nothing of the witness, your Honor.

THE COURT: Thank you, Mr. Dumaine.

THE WITNESS: May I say something to you? I appreciate your coming and helping me today instead of March.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: All right, thank you, Mr. Dumaine, you are excused.

(Witness excused.)

THE COURT: My attention has been called to the ground rules that we have for dealing with exhibits, and I stated earlier in this trial that all documents were understood to have been received in evidence subject only to the rulings at the close of the trial on their materiality and relevancy. I failed to mention competency, having misused the term competency for a reference to authentication and authenticity. But in the narrower sense, all matters of competency other than authenticity are reserved to counsel and to be ruled upon.

MR. LIMAN: Thank you, your Honor.

THE COURT: Does that complete the matter, gentlemen?

MR. LIMAN: Yes, sir.

MR. KUSHNER: Yes, sir.

MR. RYAN: Thank you, your Honor.

THE COURT: The trial is adjourned to a date to be fixed.

(Time noted: 12:10 p.m.)

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September 2, 1971

Honorable Milton Pollack
United States District Judge
United States Court House
Foley Square
New York, N.Y. 10007

Re: SEC v. Bangor Punta, 70 Civ. 3940:MP

Dear Judge Pollack:

Bangor Punta Corporation ("Bangor Punta") respectfully requests your Honor to reopen the record in the above entitled matter in order that evidence may be introduced, either by agreed facts or by oral testimony, relating to the accounting principles applicable to the manner in which Bangor Punta reported the carrying value of its interest in the Bangor and Aroostook Railroad ("BAR") in its financial statements, after Amoskeag had made the proposal to purchase the BAR ("Amoskeag Proposal"), in order that Bangor Punta can propose additional findings of fact to be made by the Court.

The application is necessitated by the statement at Page 21 of the Findings and Opinion, which reads as follows:

> "The Court is aware of no principle of accounting or of fair disclosure which would justify a failure to up-date a constructed carrying figure which may have reflected approximate fair value in 1965 but which was almost four times the offer of a willing buyer (and the only willing buyer) in 1969 -- an offer which the Board, despite its efforts in good faith to find alternatives -- was constrained ultimately to accept."
> [Emphasis added]

The underscored portion of this statement could be construed as a finding of fact that Bangor Punta's financial statements were not prepared in accordance with generally accepted accounting principles. Bangor Punta contends that there is no evidence in the record which would support a finding of fact that Bangor Punta's financial statements were not prepared in accordance with generally accepted accounting principles. The SEC has never claimed that generally accepted accounting principles required Bangor Punta to reduce the carrying value of the BAR on its financial statements merely because the Amoskeag Proposal had been made.* Bangor Punta is prepared to offer uncontrovertible evidence that, under generally accepted accounting principles, Bangor Punta was not only not required to make adjustments in the carrying value of its interest in the BAR, but to have made any such adjustment would have been contrary to generally accepted accounting principles.

Bangor Punta did not offer any evidence at the trial on this subject because the SEC did not (and could not) put Bangor Punta's financial statements in issue on the theory that the failure to adjust the carrying value of the BAR in Bangor Punta's financial statements under the factual circumstances as were found by the Court to have existed at the time, was an improper accounting practice. The failure of the SEC to challenge Bangor Punta's financial statements on this theory was not because the SEC had never considered applicable accounting principles. On the contrary, this very area of accounting treatment was fully explored by the legal staff of the SEC during the course of their examination of Mr. Thomas M. Wieler, a partner in the firm of Peat, Marwick, Mitchell & Co., Bangor Punta's independent public accountants. After Mr. Wieler explained the accounting principles supporting the decision not to make a change in the carrying value of the BAR in the financial statements, the SEC never raised the issue again. Presumably, the legal staff of the SEC consulted with the accounting staff of the SEC, who agreed with Mr. Wieler's explanation of the accounting principles applicable.

In substance, Mr. Wieler will testify, as he did previously in the SEC's confidential investigation, that because there was no agree-

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*It is submitted that the reason the SEC has consistently attempted to establish that there was an agreement to sell, or a reasonable probability of a sale of the BAR, is because the SEC acknowledges that absent such agreement or reasonable probability of an agreement, Bangor Punta's financial statements were prepared in accordance with generally accepted accounting principles.

ment, nor reasonable probability of an agreement to dispose of the BAR interests in July 1969, generally accepted accounting principles did not require or permit any adjustment in the carrying value of the BAR interests to reflect the Amoskeag Proposal or the implication of such proposal in relation to either the method employed to arrive at or the amount of such carrying value. The testimony of Mr. Wieler is not fairly controvertible, and we believe is concurred in by the accounting staff of the SEC. The SEC has been fully aware since before the instant action was instituted that Bangor Punta's independent public accountants knew of the Amoskeag Proposal in July 1969 when they reported on Bangor Punta's financial statements, and the SEC has never claimed that such knowledge required Bangor Punta's independent public accountants to reduce the carrying value of the BAR interest or otherwise disclose the Amoskeag Proposal.

Bangor Punta would request the Court to make an additional finding of fact, substantially as follows:

> "The financial statements of Bangor Punta and its unconsolidated subsidiary, the Bangor and Aroostook Railroad, incorporated in Bangor Punta's registration statement and prospectus, were prepared in accordance with generally accepted accounting principles. Under generally accepted accounting principles, Bangor Punta was not required to make any adjustment to the carrying value of its BAR interest on its financial statements because of the existence of the Amoskeag offer and the discussions within Bangor Punta relating thereto during May through August 1969."

The implication in the Court's Opinion that Bangor Punta's financial statements were not prepared in accordance with generally accepted accounting principles has consequences beyond the scope of the instant action. Had this issue been raised at the trial, Bangor Punta was prepared to offer the evidence it is now requesting be admitted to the record.

If your Honor wishes further argument on this matter, we would be available at any convenient time for the Court.

Yours respectfully,

James V. Ryan

cc: Robert E. Kushner, Esq.
SEC, Washington, D.C.

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OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

September 10, 1971

Honorable Milton Pollack
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: Securities and Exchange Commission v.
Bangor Punta Corporation, 70 Civ. 3940(MP)

Dear Judge Pollack:

The Commission opposes Bangor Punta's request for an additional finding of fact made in Mr. Ryan's letter to your Honor dated September 2, 1971. Our reasons are as follows:

1. The Court has stated in its letter to counsel of August 25, 1971, that it would consider "requests for additional essential findings in respect of the announced result . . . ." (Emphasis in original.) The request now made does not so qualify. It relates solely to the mechanics of how disclosure--which was completely omitted--should have been made in Bangor Punta's registration statement and prospectus. Thus, it is irrelevant to the result reached whether such disclosure should have been made by way of description in the text, by way of revisions in the financial statements (including the notes thereto), by way of revisions of the pro forma statements, or by any combination of these methods.

2. We contest Bangor Punta's proposed additional finding of fact. The latest financial statements in the registration statement and prospectus were unaudited figures for the six months ended March 31, 1969. In light of this Court's findings as to events subsequent to March 31, 1969, disclosure of the material facts concerning the recoverability of the carrying value of the Railroad should have been made by way of notes

to the March 31 financial statements. 1/ Disclosure should also have been made by way of notes to the pro forma statements and by way of textual description.

We have not commented on numerous contentions made in Mr. Ryan's letter, even though we catergorically disagree with them, simply because we do not believe that those contentions have any bearing on the present issue.

Yours truly,

Robert E. Kushner
Assistant General Counsel

CC: James V. Ryan, Esq.
Webster, Sheffield, Fleischmann,
Hitchcock & Brookfield
1 Rockefeller Plaza
New York, New York 10020

1/ Notes to a financial statement are, of course, an integral part of the statement. Had the Bangor Punta financial statements covered a period during which the relevant events concerning the Railroad had occurred, the body of those statements would have had to reflect an adjustment to the carrying value of the Railroad. In this connection, Montgomery's Auditing states:

> Occasionally a company offers for sale a portion of its land, buildings, and equipment that is no longer needed in the business. If such property has an estimated sales value appreciably less than its depreciated cost, it should be written down to the estimated sales value. P. 250 (Eighth ed. 1957)

WEBSTER SHEFFIELD FLEISCHMANN HITCHCOCK & BROOKFIELD
1 ROCKEFELLER PLAZA · NEW YORK, N.Y. 10020

September 16, 1971

Honorable Milton Pollack
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: Securities and Exchange Commission v. Bangor Punta Corporation, 70 Civ. 3940(MP)

Dear Judge Pollack:

We received the letter of September 10, 1971 from the Securities and Exchange Commission in answer to our letter to your Honor of September 2, 1971 in which we moved to reopen the record in the above matter in order that additional evidence could be introduced in support of our requested additional findings.

The response of the SEC would seem to make it unnecessary to reopen the record to achieve the objective of our application to your Honor. The purpose of Bangor Punta's application is to assure that your Honor's opinion is not construed by some other forum as a determination of fact that Bangor Punta's financial statements were not prepared in accordance with generally accepted accounting principles. It is our contention that this specific issue of fact was never litigated in this action and that there is

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no evidence in the record on this issue. Bangor Punta does not wish to be met by an argument in another forum in the future that Bangor Punta should be precluded from litigating such issue because the issue was not litigated before your Honor.

In its answering letter, although the SEC contests Bangor Punta's proposed additional finding of fact, the SEC does not claim that your Findings and Opinion dated August 25, 1971, constitutes a holding that Bangor Punta's financial statements were not prepared in accordance with generally accepted accounting principles. Instead in Paragraph Number "1" the SEC argues that the failure to disclose the possible effect of the Amoskeag proposal on the carrying value of the BAR in the text of the prospectus would be a violation. The adoption of this position by the SEC, would make it unnecessary to reopen the record of this case to satisfy our application if it is indicated in the disposition of this application that the issue of the conformity of Bangor Punta's financial statements with generally accepted accounting principles was not litigated in this action.

Although the SEC contends otherwise, the SEC does not dispute that there was no evidence in the record of the accounting principles applicable to the situation which existed in regard to the Bangor Punta financial statements after the Amoskeag proposal was made. The SEC points to no evidence before the Court challenging the accounting treatment employed in the preparation of the Bangor Punta financial statements after the Amoskeag proposal. Instead, the SEC argues in Paragraph Number "2" of their letter that the material facts relating to the " ... recoverability of the carrying value of the Railroad should have been made by way of notes to the March 31 financial statements." This argument is based solely upon the authority cited in Footnote Number "1" which was not introduced at the trial and is obviously not relevant. The statement in Montgomery's Auditing cited specifically refers to the accounting treatment applicable to contemplated occasional offers for sale of surplus, obsolete property. The BAR was certainly not surplus, obsolete property, and the Court has found as a fact that in July, 1969

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there had been no decision made to dispose of the BAR.

However, as pointed out above, the disputed issue of fact concerning the conformity of the Bangor Punta financial statements with generally accepted accounting principles need not be resolved by a further hearing as previously requested, because as apparently both the SEC and ourselves agree, the issue was not litigated before your Honor. Therefore, based upon this position of the SEC, we amend our original motion to reopen the record and request that the Court indicate in disposing of this application that, as agreed by the parties, the issue as to whether Bangor Punta's financial statements conformed to generally accepted accounting principles was not litigated in this action.

Yours respectfully,

James V. Ryan

Cc: Robert Kushner, Esq.
Securities and Exchange Commission
Washington, D.C.

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